

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: . Chapter 11  
. .  
KAISER ALUMINUM CORPORATION, . Case No. 02-10429 (JKF)  
ACandS, INC. . Case No. 02-12687 (JKF)  
OWENS CORNING . Case No. 00-3837 (JKF)  
USG CORPORATION . Case No. 01-2094 (JKF)  
W.R. GRACE & CO. . Case No. 01-1139 (JKF)  
PITTSBURGH CORNING CORP. . Case No. 00-22876 (JKF)  
NORTH AMERICAN REFRACTORIES CO . Case No. 02-20198 (JKF)  
. .  
Debtors. . Feb. 14, 2011 (8:40 a.m.)  
. (Wilmington)  
. . . . .  
ACandS Asbestos Settlement .  
Trust, et al., .  
. .  
Plaintiffs, .  
. .  
vs. . Adv.Pro.No. 10-53719 (JKF)  
. .  
Hartford Accident and .  
Indemnity Co., et al., .  
. .  
Defendants. .

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JUDITH K. FITZGERALD  
UNITED STATES BANKRUPTCY COURT JUDGE

Appearances:

For Garlock: Gregory Werkheiser, Esq.  
Matthew B. Harvey, Esq.  
Morris, Nichols, Arsht & Tunnell  
Garland Cassada, Esq.  
Richard Worf, Esq.  
Robinson Bradshaw

For Various Law Firms: Sander L. Esserman, Esq.  
Stutzman, Bromberg, Esserman & Plifka

For Various Law Firm Objectors:	Natalie Ramsey, Esq. Montgomery, McCracken
For Asbestos Claimants Committees:	Peter Lockwood, Esq. Caplin & Drysdale
For Owens Corning:	Adam Isenberg, Esq. Lucian Murley, Esq. Saul Ewing, LLP
For the U.S. Trustee:	Richard Schepacarter, Esq. U.S. Trustee's Office
For Pittsburgh Corning and NARCO:	James J. Restivo, Esq. Reed, Smith, Shaw & McClay

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<u>Garlock's Exhibits:</u>		<u>Marked</u>	<u>Received</u>
1	Examples of 2019 Statements	36	
2	Summary of Statements	37	
3	Examples of 2019 Statements Filed on Public Dockets	37	
4	Excerpt of FED Report	37	
5	Chapter 13 Petition	38	
6	Extract from Claims Register	39	
7	Copy of New Article	39	
8	List of Pending Cases	40	
9	List of Pending Texas Cases	41	
10	Master Ballot	41	
11	Five Documents	41	
A	Article from Dallas Observer	42	
B	Article from the Wall Street Journal	42	
C	Letter from Congressman	43	
D	Article from Forbes	43	
E	Copy of Article	43	
D	Baron & Budd 2019 Statement	43	
E	Waters & Kraus 2019 Statement	43	
I	Order Granting Access	44	
J	2019 Order	44	
K	2019 Statement	44	
L	Complaint	44	
M	Interrogatory Response	44	
N	Voting Procedures	45	
O	2019 Statement	45	
B	Reply to Order Unsealing	45	

1 THE CLERK: All rise.

2 THE COURT: Good morning. Please be seated. The  
3 first matter is a motion by Garlock Sealing Technologies for  
4 a certain 2019 application in the cases of ACandS, Bankruptcy  
5 No. 02-12687; Armstrong World Industries, 00-4471; Combustion  
6 Engineering, 03-10495; Flintkote, 04-11300; Kaiser, 02-10429;  
7 Owens, 00-3837; US Mineral, 01-2471; USG Corporation, 01-  
8 2094; W.R. Grace, 01-1139, and in several Pittsburgh cases,  
9 Pittsburgh Corning, 00-22876; North American Refractories,  
10 02-20198; and Mid-Valley, 03-35592. I have a list of  
11 participants by phone: Michael Balch, Leonard Bieringer, John  
12 Demmy, Dennis Dolan, Rodney Eshelman, Robert Goodman, Cheryl  
13 Heller, Robert Horkovich, Nicolas Koch, Elene Moran, Joseph  
14 Nese, Edward Parks, James Restivo, Crystal Thorton-Illar,  
15 Britt Walther, David Ziegler, Elisa Alcabes, Scott Baena,  
16 Janet Baer, Deanna Boll, Thomas Brandi, Claire Burke,  
17 Elizabeth Cabraser, Kellie Cairns, Linda Casey, Richard Cobb,  
18 George Coles, Leslie Davis, Martin Dies, John Donley, Michael  
19 Duggan, Terrance Edwards, Lisa Esayian, Debra Felder, Roger  
20 Frankel, James Green, Steven Gutman, Sarah Hargrove, Sarah  
21 Hamett, Douglas Herrmann, Roger Higgins, Robert Horkovich,  
22 Christina Kang, Brian Kasprzak, David Klingler, Matthew  
23 Kramer, Arlene Krieger, Richard Levy, Nancy Manzer, Phillip  
24 Mitch, Charles Nerko, David Parsons, Kenneth Pasquale, Adam  
25 Paul, Margaret Phillips, John Phillips, Mark Plevin, Francine

1 Rabinovitz, Joseph Radecki, James Restivo, Alan Rich, Andrew  
2 Rosenberg, Alan Runyan, Jay Sakalo - there must be some  
3 lawyers left in the country who aren't - David Salzman,  
4 Alexander Sanders, Tancred Schiavoni, Adam Schlesinger,  
5 Darrel Scott, Stephen Shimshak, Michael Shiner, Jason  
6 Solganick, Gibson Solomons, Daniel Speights, Gary Svirsky,  
7 Theodore Tacconnelli, Cliff Taylor, David Turetsky, Edward  
8 Westbrook, Richard Wyron, Rebecca Zubaty, David Christian,  
9 Michael Davis, Joseph Frank, Phillip Milch, David Salzman,  
10 James Wehner, Richard Swanson, Michael Davis - I'm starting  
11 to get repeats here - Sally Edison, Beverly Manne, Gary  
12 Philip Nelson, Kevin Lantry, Ronald Reinsel, and then I  
13 believe after that, these are parties for specific cases.  
14 Okay, the rest are parties for specific cases, I believe.  
15 I'll take entries in Court, good morning.

16 MR. WERKHEISER: Good morning, Your Honor. For the  
17 record, Gregory Werkheiser, Morris, Nichols, Arsht & Tunnell,  
18 LLP, Delaware co-counsel for Garlock Sealing Technologies  
19 LLC. Your Honor, just a couple of administrative matters,  
20 and I know that the nature of our motion bridging as it does  
21 several cases has created some administrative challenges for  
22 the Court. We had contact from debtors' counsel in the  
23 Kaiser Aluminum case which is one of the cases that our  
24 motion was filed in, and they asked me as a courtesy to  
25 advise the Court that they would not be attending today

1 although their agenda is the agenda that controls for  
2 purposes of the adversary proceeding that was also scheduled  
3 prior to Your Honor's entry of an order cancelling the  
4 pretrial status conference today, and they had one other  
5 matter on for calendar today which they indicated in their  
6 amended agenda filed on February 7<sup>th</sup> was resolved. The sole  
7 matter they had was our motion as to which they'd taken no  
8 position. Your Honor, before we get started, I did have one  
9 or two housekeeping matters, if I could. Late last week we  
10 filed *pro hac vice* motions on behalf of Garland Cassada and  
11 Richard Worf of our co-counsel Robinson Bradshaw & Hinson,  
12 P.A., and last week we consulted -

13 THE COURT: I haven't seen them, and I've been  
14 having some problems in some of these dockets with pleadings  
15 being filed and they're not either being transmitted to the  
16 JKF box or not linked to various things, not specifically  
17 this case. I just haven't seen them, so, I'll be happy to  
18 enter them. I'm familiar with Mr. Cassada and Mr. Worf and  
19 I'll be happy to enter them, but I haven't seen them yet.

20 MR. WERKHEISER: Thank you, Your Honor, we  
21 appreciate that courtesy. I do have copies I can hand up -

22 THE COURT: No, they'll be entered electronically,  
23 thank you.

24 MR. WERKHEISER: Very good, Your Honor, thank you  
25 very much. Your Honor, with that then, I'll cede the podium

1 to Mr. Casssada and he can present our motion.

2 THE COURT: Well, could I get entries of appearances  
3 first, please.

4 MR. WERKHEISER: Yes, Your Honor.

5 THE COURT: Okay, thank you. Good morning.

6 MR. CASSADA: Good morning, Your Honor. Garland  
7 Cassada. I'm here with Rich Worf and we represent Garlock  
8 Sealing Technologies.

9 THE COURT: Thank you.

10 MR. CASSADA: Thank you.

11 MR. ESSERMAN: Good morning, Your Honor. Sander  
12 Esserman on behalf of various law firms. Thank you

13 MS. RAMSEY: Good morning, Your Honor. Natalie  
14 Ramsey, Montgomery, McCracken, Walker & Rhoads on behalf of  
15 certain law firm objectors.

16 MR. LOCKWOOD: Good morning, Your Honor. Peter  
17 Lockwood on behalf of the Asbestos Claimants Committees in  
18 Grace, NARCO, Pittsburgh Corning, and Flintkote.

19 THE COURT: Good morning.

20 MR. ISENBERG: Good morning, Your Honor. Adam  
21 Isenberg, Saul Ewing on behalf of Reorganized Ownes Corning  
22 and I'm here with Luke Murley of our Delaware office as well.

23 THE COURT: I'm sorry, you're here with whom?

24 MR. ISENBERG: Luke Murley of our Delaware office.

25 THE COURT: Thank you.

1 MR. ISENBERG: Thank you.

2 MR. MURLEY: Good morning, Your Honor. I'm Luke  
3 Murley. I'm Mr. Isenberg's local counsel. We are also  
4 counsel to Herd who is a personal injury claimant in the  
5 Kaiser Aluminum case, and we would like to be heard on an  
6 issue either now or later in that case.

7 THE COURT: If it's not on my agenda today, I'm  
8 sorry, file something. I really have a very, very full  
9 agenda today.

10 MR. MURLEY: I understand, Your Honor. We had  
11 filed something a week ago, we're just asking for the Court's  
12 ruling on it. It's a motion to shorten notice on a motion  
13 for relief.

14 THE COURT: I haven't seen it. Was it sent to the  
15 JKF box?

16 MR. MURLEY: It was sent to Your Honor's chambers in  
17 Wilmington.

18 THE COURT: I don't sit in Wilmington. You need to  
19 post things in the JKF box. My procedure orders are very  
20 clear. Otherwise they don't come to my attention. If you  
21 please do that, I will address it.

22 MR. MURLEY: Very well, Your Honor, we understood  
23 that we were precluded from sending it to Pittsburgh, but  
24 we'll send it as soon as we can.

25 THE COURT: Precluded from sending it to Pittsburgh?



1 UNIDENTIFIED SPEAKER: (Indiscernible)

2 MR. MURLEY: Correct, Your Honor. We read your  
3 chamber procedures to only limit certain motions that are  
4 filed in Delaware cases to be filed with Pittsburgh, but if  
5 we know that Your Honor would like that, we could get it to  
6 you as soon as possible.

7 THE COURT: There's a miscommunication. Deal with  
8 my law clerks. They'll explain to you how to do it after  
9 this hearing, please. I will be happy to address anything  
10 you send but unless you send it to the correct email address,  
11 I simply don't see it. It just doesn't come to my attention.  
12 So if you just talk to Ms. Baker after this hearing is over  
13 for a minute and get it done then I'll be happy to address  
14 it.

15 MR. MURLEY: Thank you, Your Honor.

16 THE COURT: All right. Good morning.

17 MR. SCHEPACARTER: Good morning, Your Honor.  
18 Richard Schepacarter for the United States Trustee.

19 THE COURT: Anyone else for these hearings? Mr.  
20 Cassada.

21 MR. CASSADA: Thank you, Your Honor, and thank you  
22 for allowing us to be heard here today. Your Honor, I will  
23 present our argument. Mr Worf will then stand up and  
24 introduce our exhibits, and we'll try to be as efficient as  
25 possible understanding the Court's calendar is full today.

1 Your Honor, Garlock is here today seeking access to exhibits  
2 to Rule 2019 statements filed by law firms in 12 bankruptcy  
3 cases. The statements state that the exhibits that we're  
4 seeking identify creditors of the respective debtors. More  
5 specifically, the exhibits contain lists of thousands of  
6 individuals who the law firms identify as their clients who  
7 hold asbestos personal injury claims against 12 subject  
8 bankrupt asbestos defendants. The disc include the names of  
9 the creditors, the addresses, the amounts of claims if  
10 applicable, dates of acquisition of claims if within one  
11 year, and disease types. The exhibits, Your Honor, also  
12 include a blank but unredacted exemplar instrument whereby  
13 the law firms were empowered to act for the identified  
14 claimants in the particular Chapter 11 cases. As the Court  
15 knows, normally the names of persons identified as creditors  
16 and 2019 statements are available to the public. In these  
17 cases the exhibits were not placed on the electronic docket  
18 but filed with a clerk on compact discs. The Court ruled in  
19 each of the cases that the exhibits are subject to access  
20 upon motion and order. Garlock has filed such a motion in  
21 these 12 cases and contends that it is entitled to access the  
22 exhibits because they are public judicial records to which  
23 Garlock as a member of the public has a right to access under  
24 Code § 107, the first amendment to the United States  
25 Constitution -

1           THE COURT: You know, Mr. Cassada, that really  
2     bothers me because that's really disingenuous. Garlock isn't  
3     seeking these to vindicate an public right. Garlock's own  
4     motions indicate that they are attempting to access these  
5     documents for use in attempting to prove that somebody lied.  
6     Now, I don't know what can be more scandalous and hazardous  
7     to an individual or a law firm's reputation than to seek  
8     access to a document for purposes of proving that someone  
9     lied even if the document doesn't in any way support that or  
10    if it does support it. That doesn't seem to me to be  
11    vindicating a public interest. That is Garlock's agenda and  
12    it may be a legitimate agenda in its own case. I'm not  
13    attempting to cast aspersions but the purpose of Rule 2019 is  
14    not that, and in half of these cases, these cases are closed,  
15    and Rule 2019 specifically says that it's for the purpose of  
16    determining in the case. Well, there is no case in the cases  
17    that are closed. Those cases are over, and even as to the  
18    cases that are open, almost all of them have already been  
19    through the plan confirmation process and Rule 2019, the  
20    purpose for it as articulated in every case that I could find  
21    and in the legal documents, the publications that address it  
22    are all for purposes of assisting in the reorganization to  
23    make sure that it's a fair and open process for the creditors  
24    in that case, one of which did not include Garlock. So, I  
25    have closed cases on the one hand. I've got confirmed plans

1 on the other, and I have an agenda by somebody who purports  
2 to want access for vindication of some unstated public right  
3 when that isn't the purpose. Now, let's get to why it is  
4 that Garlock wants this information and whether or not  
5 Garlock is really entitled to it under these circumstances  
6 because I'm having some difficulty, particularly in the  
7 closed cases. I don't have motions to reopen. I don't have  
8 a party in interest because Garlock didn't even appear in  
9 those cases, so I don't know how Garlock could reopen, but  
10 maybe there's a way, but I don't have that motion before me.  
11 So, let's talk about the closed cases first.

12 MR. CASSADA: Okay, Your Honor. You said a lot  
13 there. Fortunately -

14 THE COURT: Yes, I have. I've read the documents,  
15 I've read the cases, I've read the pleadings, I've looked at  
16 the exhibits - some of the exhibits, not all of the exhibits.  
17 I simply don't see a basis for this as to the closed cases.

18 MR. CASSADA: Okay, but just to be clear. We  
19 believe the Third Circuit has provided a wealth of case law  
20 that addresses every issue that you've raised.

21 THE COURT: Indeed it has, in a fashion that I just  
22 articulated.

23 MR. CASSADA: First, Your Honor, I would submit that  
24 Garlock's purpose is not relevant nor is the purpose of the  
25 Rule 2019 statements.

1           THE COURT: Oh, but it is, it is for this reason,  
2   because public access, even under the constitution, in civil  
3   cases is limited when the purpose for the access is improper.  
4   That's the word the cases use. The statute sometimes uses  
5   the word "illegal", but the cases use the word "improper". I  
6   don't see how this is proper on behalf of Garlock to do a  
7   wide fishing expedition through 2019 statements that have a  
8   lot of private information. You know, somebody's health  
9   status is not something that is generally available on the  
10   public record to anyone, and that's the reason why these  
11   documents were sealed. You want creditor names and  
12   addresses, okay. What good they're going to do; I don't  
13   know. But the disease level that somebody has, how is  
14   Garlock entitled to that information when you're not even a  
15   party in interest in the case?

16           MR. CASSADA: Your Honor, I believe you're looking  
17   at it from the wrong perspective. Under the right of public  
18   access, Your Honor, there is a presumptive right to access to  
19   public documents.

20           THE COURT: There is.

21           MR. CASSADA: And that presumption, it's a very  
22   strong presumption, and it can only be overcome if you have  
23   evidence before you that shows - that meets the standard, and  
24   the standard is that the information is the type of  
25   information that Courts protect and second that disclosure of

1 the information would render a clearly defined and serious  
2 injury. Now let's look at the type of information, what Your  
3 Honor has called product information, but I'd submit that  
4 that kind of perspective turns the rule on its head. The  
5 information here is information about creditors to a  
6 bankruptcy case.

7 THE COURT: No, actually it's not because the Rule  
8 2019 statement is not a statement by a creditor. It's a  
9 statement by a law firm that says, I represent X-people and  
10 in my view those people may have a claim. The purpose then  
11 is to true-up whether that entity has the right to represent  
12 that creditor who may then vote in the case later on, and  
13 it's the vote in the case later on that substantiates whether  
14 the creditor thinks it has a claim, and I've already told  
15 you, you can have the ballots.

16 MR. CASSADA: Well, Your Honor, let's look at Rule  
17 2019. Rule 2019 says that lawyers who represent more than  
18 one creditor file a statement disclosing their  
19 creditor/clients and in this particular case -

20 THE COURT: Mona, can you get me a Bankruptcy Code.  
21 I don't have a Bankruptcy Code here, please.

22 MR. CASSADA: And in this particular case, Your  
23 Honor, we look at the 2019 statements that were filed, which  
24 on their face say that these are creditors to these cases who  
25 we represent, and in fact, most of them are signed under oath

1 and they say, I have knowledge of the facts set forth herein,  
2 and the people on this list were exposed to and injured by  
3 the products of the debtor. So, Your Honor, the Rule 2019  
4 statements, they say what they say. We're not here to say  
5 that they say something they don't say, and nothing you can  
6 do here today changes that. The question is whether we're  
7 entitled to access to them. Let me address Your Honor's  
8 question about the fact that we're dealing in bankruptcy  
9 cases that are closed. You may have read the Third Circuit's  
10 decision in Pansy v. Borough of Stroudsburg and in that case  
11 the Court made clear that a party, a member of the public can  
12 intervene long after a case is closed -

13 THE COURT: But you haven't. There's no motion to  
14 intervene. There's no motion to reopen. I simply have this  
15 motion in these cases. I don't even think I have  
16 jurisdiction over this motion in those cases because the  
17 cases are closed. I don't have a motion to intervene or a  
18 motion to reopen.

19 MR. CASSADA: Your Honor, if you read our motion, we  
20 moved to intervene.

21 THE COURT: No, you haven't. That's a separate  
22 motion that has to be filed. You have asked for access to  
23 2019 statements, and somewhere buried in these documents is  
24 the fact that maybe you've got the right to reopen and maybe  
25 you've got the right to intervene. I don't have a motion to

1    reopen and I don't have a motion to intervene, and if you  
2    want to file one, you know how to do that, Mr. Cassada.

3           MR. CASSADA: Well, I suggest, Your Honor, if you  
4    read our papers you'll see that we moved to intervene and  
5    that we moved to open and that some of the parties even  
6    responded to those particular things.

7           THE COURT: Some have responded because it's buried  
8    in the document. It is not a motion to reopen, and it is not  
9    a motion to intervene. I'm not aware that you paid the  
10   reopening filing fees for a motion to reopen, and until the  
11   case is reopened, I don't now how you intervene. So I don't  
12   see anything procedurally correct, Mr. Cassada, and I don't  
13   think I have jurisdiction over those motions because those  
14   cases are closed, and until you move to reopen, pay the  
15   filing fee, and then move to intervene, I don't think you've  
16   got even standing to raise the issue in the closed cases.  
17   I'm talking about the closed ones.

18           MR. CASSADA: Okay, Your Honor. Let me remind you  
19   of proceedings that are before the Court now where the  
20   Delaware trust had sued Garlock in several cases that were  
21   not opened, and in those cases, Your Honor, you determined  
22   that you did not need to open those cases. You said, I think  
23   the jurisdiction is either there or it's not and the  
24   reopening in my view doesn't facilitate or un-facilitate that  
25   process, so those -



1 THE COURT: That wasn't a 2019 issue. That was an  
2 issue about a -

3 MR. CASSADA: But it was more than that. It as an  
4 adversary proceeding suing Garlock for relief.

5 THE COURT: Yes. The alleged theory there is that  
6 it's an aid of execution of the plan over which I kept  
7 jurisdiction in the orders. I have not kept jurisdiction  
8 over a Rule 2019 motion in a closed case. There's no purpose  
9 any longer to 2019 in a closed case. You need to move to  
10 reopen those cases, if that's what you intend to do.

11 MR. CASSADA: Your Honor, I would submit to you  
12 Garlock is here to vindicate a constitutional right, a right  
13 of public access -

14 THE COURT: You may be, but you have to do it the  
15 right way.

16 MR. CASSADA: And Garlock is entitled to the same  
17 treatment as the trust.

18 THE COURT: You'll get the same treatment as the  
19 trust. If they want to access the 2019 statements, they're  
20 going to have to move to reopen the closed cases too.

21 MR. CASSADA: We did file a motion to reopen, Your  
22 Honor, and that's before the Court today.

23 THE COURT: I haven't seen a motion to reopen.  
24 Where is it?

25 MR. CASSADA: Your Honor, it's in our papers.

1 THE COURT: No, Mr. Cassada. You have to pay a fee  
2 to reopen a case. You have to file a motion to reopen a case  
3 and pay the filing fee and then move to intervene. You don't  
4 do it in a request to give me access to a pleading in a  
5 closed case. It's not procedurally correct. That portion of  
6 this, I don't have jurisdiction over. I didn't keep  
7 jurisdiction over this issue in the plan. So you need to  
8 reopen the case if that's what you intend to do.

9 MR. CASSADA: Okay. So, I have to pay the fee  
10 before you enter an order reopening?

11 THE COURT: I think that's the way it works. I  
12 don't deal with the fees, but I believe when you file a  
13 motion to reopen there's a fee that's charged, I think.

14 MR. CASSADA: Your Honor, several of the cases are  
15 not closed.

16 THE COURT: That's right.

17 MR. CASSADA: And we have moved to intervene in  
18 those cases.

19 THE COURT: You have moved? I haven't seen a motion  
20 to intervene.

21 MR. CASSADA: Well, Your Honor, it's in our - We  
22 moved to intervene.

23 THE COURT: No, Mr. Cassada, that's not how it's  
24 done. You do it the right way. There is no motion to  
25 intervene. You've asked for access to Rule 2019 statements.

1 You have not moved to intervene.

2 MR. CASSADA: Okay.

3 THE COURT: But that's a different issue in the open  
4 cases anyway. It's a significant issue in the closed cases.  
5 I don't know if it's so significant in the open cases.

6 MR. CASSADA: Okay. Your Honor, let me talk about,  
7 for a moment, the rules that apply on Garlock's motion for  
8 access, and then I'll address some of the other issues that  
9 the Court raised. As the Court knows, the public's right to  
10 access has been recognized as a fundamental and essential  
11 feature of our judicial system. The Third Circuit has  
12 concluded that public access is a constitutional and common  
13 law right and has explained that public access promotes  
14 public confidence in the judicial system by enhancing  
15 testimonial trustworthiness and a quality of justice  
16 dispensed. It diminishes the possibility of perjury and  
17 fraud. It provides the public with a more complete  
18 understanding of the judicial system and a better perception  
19 of its fairness, and it helps to insure that judges perform  
20 their duties in an honest and informed way. So what are the  
21 public access rules? As we've stated, there's a common law  
22 and first amendment presumptive right to access, and this can  
23 only be overcome, says the Third Circuit, if the person  
24 seeking closure meets the burden of showing two things: that  
25 the record contains the kind of material courts will protect

1 and two, that disclosure of that material will work a clearly  
2 defined and serious injury to such person. In meeting the  
3 standard, the Third Circuit has explained, specificity is  
4 essential. Broad allegations of harm, breadth of specific  
5 examples or articulated reasoning are insufficient. And  
6 moreover, in any order denying public access the Court must  
7 articulate specific injuries that justified a non-public  
8 access and make specific findings supported by specific  
9 evidence. Bankruptcy Code § 107 also is codified in the  
10 Bankruptcy Code, the public's right to access. That section  
11 says that a paper found in a case under this title in the  
12 dockets of a Bankruptcy Court are public records and open to  
13 examination by an entity at reasonable times without charge.  
14 Now the Code sets forth some specified limited exceptions to  
15 that which are likewise quite narrow. The Court is familiar  
16 with these. The Court can order closure to protect an entity  
17 with respect to a trade secret or confidential research,  
18 development, or commercial information, protect a person with  
19 respect to scandalous or defamatory matter contained in a  
20 paper filed in a case, and protect an individual from an  
21 undue risk of identity theft or other unlawful injury. Of  
22 course any determination under § 107 must not run roughshod  
23 over Garlock's first amendment rights. Again, broad  
24 allegations of harm, lack of specificity, and failure to  
25 offer articulated reasons are insufficient and any order must

1 be supported by specific findings and specific evidence. And  
2 finally, the Third Circuit has ruled that any order limiting  
3 public access must be narrowly tailored to protect only  
4 information that meets the standard. Your Honor, we're not  
5 here to complain about the orders that you've entered in the  
6 cases. Those orders do nothing more. The Third Circuit has  
7 explained and set up a procedure for exercising the right of  
8 public access, and in fact, in that case the appeals of  
9 insurers were rejected because they never asked for the  
10 documents and the Superior Court said that in order to  
11 determine - their appeal would not be ripe until they had  
12 asked for documents. There had been -

13 THE COURT: I think that was the District Court.

14 MR. CASSADA: And then later the Third Circuit on  
15 appeal, Your Honor.

16 THE COURT: Not the Superior - I was just referring  
17 to the correct court.

18 MR. CASSADA: Okay, I'm sorry, I misspoke. There's  
19 no dispute, Your Honor, that the Rule 2019 statements and  
20 their exhibits are judicial records to which the first  
21 amendment, common law, and § 107 rights of public access  
22 apply. Indeed, as Your Honor knows, Rule 2019 is a  
23 disclosure rule that require the lawyers in these cases to  
24 disclose in a public record the identity of creditors they  
25 represented and the bases for their claims. Garlock clearly

1 has a presumptive right of access. The sole question is  
2 whether the objectors have met or can meet their burden of  
3 showing that one of the narrow exceptions to public access  
4 applies. Only a person threatened with a qualifying injury  
5 has standing to object, the Committees in these cases, Your  
6 Honor, who filed a spirited objection, they have and are  
7 threatened with no injury at all. So they're not persons  
8 aggrieved. They had no standing and the same would be true  
9 for the debtor Pittsburgh Corning, which has filed an  
10 objection. But in considering this, Your Honor, remember  
11 we're talking about the identities of creditors in bankruptcy  
12 cases. It is inconceivable that any exception to the  
13 constitutional right of public access could ever be shown in  
14 a bankruptcy case that would shield from public view the  
15 names of creditors and the bases for their claims. Now, the  
16 objecting law firms have spilled a lot of ink that barely  
17 hints at a possible injury. They've not even come close to  
18 properly alleging much less offering evidence to meet the  
19 burden of showing a clearly defined and serious injury or  
20 that the information they seek to protect from public view is  
21 the kind of information that courts would do that, would  
22 protect. They begin by asserting a general right to privacy.  
23 Your Court mentioned this. Their leading premise is that  
24 these folks had a right to privacy and that burden is on  
25 Garlock to establish need under the federal discovery rules.

1 This completely misses the mark, Your Honor, and it's wrong,  
2 at least in two ways. First, the law is clear that the  
3 burden is on the law firms and the claimant clients to  
4 demonstrate a basis for denying public access. As explained,  
5 they must show a clearly defined and serious injury and they  
6 have to show that this is the kind of information the courts  
7 will protect. So Garlock has no burden. Instead it has a  
8 presumptive right to access. And second, persons who pursue  
9 claims in federal courts have no right to shield their  
10 identities and their injuries from the public, just the  
11 opposite. They must assert their claims in the light of day.  
12 Tort claimants are no exception to this rule. They must  
13 identify themselves and their grievances and injuries in open  
14 court. So the fact that some of these folks have diseases  
15 allegedly caused by exposure to asbestos, that gives them no  
16 right to privacy, Your Honor. They file complaints in public  
17 courts all over the country identifying their names,  
18 identifying their injuries, and seeking relief. So the  
19 general privacy argument, Your Honor, it completely fails.  
20 There's no merit to it at all. Now § 107(b) states that a  
21 court may protect the disclosure of means of identification,  
22 a defined term, upon a showing that disclosure would create  
23 an undue risk of identity theft. Now remember to meet this  
24 standard, specificity is essential. Broad allegations,  
25 breadth of harm, breadth of specific examples are

1 insufficient. Again, the objectors only hint at this  
2 argument and none is offered or can offer any evidence that  
3 public access creates a risk of identity theft. First, the  
4 rule doesn't shield the names of creditors and the bases for  
5 their claims in bankruptcy cases. Creditors in bankruptcy  
6 cases are required to publicly identify themselves and the  
7 bases for their claims. Indeed, they file form proofs of  
8 claims on claims registers that are open to the public and  
9 the forms, they require names, addresses, amount of claims  
10 and bases of claims even if the -

11 THE COURT: But, of course, that's not true in these  
12 asbestos cases, there are no proofs of claim filed on behalf  
13 of the personal injury creditors. You know, that's really  
14 the problem between 107 and Rule 2019. In looking at 2019,  
15 Congress was really, it appears, attempting to address  
16 commercial enterprises and the whole rule is written that way  
17 and 107 isn't. So when we try to meld the purpose of 2019  
18 into a personal injury action, because the rule's mandatory  
19 and you've got to file the information that's required, it  
20 doesn't work very well, and Congress, unfortunately, hasn't  
21 fixed that problem. The problem, I think, Mr. Cassada - I  
22 agree, the names of creditors are disclose-able, and to a  
23 certain extent their addresses may be disclose-able if that's  
24 not somehow or other going to cause some identity problem or  
25 other problem for a creditor. I don't disagree with that,



1 but the nature of their injury, that's not something that  
2 would be on the public record because there are no tort  
3 claims filed here and to the extent someone's filed a  
4 complaint in another system that identifies that, then you  
5 have access to it from the complaints that they filed in the  
6 other system, but I don't even know in terms of the 2019  
7 statements if the creditors themselves, and I'm using that  
8 term in quotes, "creditors", know that their names are on  
9 these 2019 statements or the nature of their injury. They're  
10 not filed by creditors under oath, they're filed by a law  
11 firm that says, I represent more than one entity and the  
12 purpose, as articulated in the rule for a noncompliance with  
13 the rule, is penalties against the law firm not against the  
14 creditor. The law firm may not be able to file a master  
15 ballot but the creditor's still entitled to vote. So, there  
16 is no penalty for an inappropriate 2019 statement on behalf  
17 of the creditor. The penalty is on the entity who filed the  
18 statement. So, I'm a little bit, I guess, confused as to  
19 what public information is available in the 2019 statements  
20 that's not available in the ballots where people actually do  
21 come forward and say I'm a creditor because they voted in the  
22 case. And you have access to the ballots. I've already said  
23 you can access the ballots, because they're public.

24 MR. CASSADA: And there's no new need for any  
25 confusion there, Your Honor, and really the two don't really

1 have anything to do with one another.

2 THE COURT: Well, they sure do.

3 MR. CASSADA: The point of mentioning the proofs of  
4 claim is to demonstrate that the kind of information in these  
5 2019 statements is not the kind of information that courts  
6 typically protect, just the opposite.

7 THE COURT: There is no proof of claim.

8 MR. CASSADA: I'm sorry?

9 THE COURT: There is no proof of claim which  
10 demonstrates that it is the type of information the courts  
11 will protect. That's one reason why you don't have people  
12 file proofs of claim in that circumstance. They're going to  
13 be dealt with, their claims to the extent they have them are  
14 going to be dealt with in a non-bankruptcy - again, using  
15 that term loosely, mechanism. That is through a trust that  
16 is formed with resources through the bankruptcy that it is  
17 administered separately.

18 MR. CASSADA: But that has nothing to do with  
19 Garlock or the public's right to access to a judicial record  
20 and the point of comparing the proof of claim, Your Honor, is  
21 to show that this is not information that would subject these  
22 people to risk of identity theft because it's the kind of  
23 information that Bankruptcy Courts require to be filed in  
24 public including for tort claimants their injury.

25 THE COURT: Bankruptcy Courts don't require proofs

1 of claim in these cases.

2 MR. CASSADA: Some -

3 THE COURT: So, the analogy doesn't work. There is  
4 no proof of claim filed by these entities.

5 MR. CASSADA: I think we're not connecting on this  
6 point, Your Honor. The point is that the information in the  
7 2019 statements does not impose any risk of identity theft as  
8 evidenced by the fact that creditors who are required to file  
9 proofs of claim provide the same information in proofs of  
10 claim.

11 THE COURT: Creditors who are required to file  
12 proofs of claim identify their names and addresses and  
13 whatever the basis for their claim is, that's correct.  
14 That's what you do in a proof of claim.

15 MR. CASSADA: That's correct, exactly, and there's  
16 no basis for finding that in a 2019 statement when that same  
17 information exists that it creates a risk of identity theft.  
18 That's the issue that we're addressing right now.

19 THE COURT: All right.

20 MR. CASSADA: And, I mean, to get to your point  
21 about the ballots, Your Honor, the ballots are judicial  
22 documents too.

23 THE COURT: Yes.

24 MR. CASSADA: And we're entitled to those as well.

25 THE COURT: That's what I said.

1 MR. CASSADA: And there's no reason for Garlock to  
2 bargain away one right of access to be able to exercise a  
3 different right of access. We are entitled to both.

4 THE COURT: The problem is that the case law is  
5 clear that the courts can prevent access to documents that  
6 are under seal when the purpose for the request to get the  
7 access is itself improper, and Garlock isn't here alleging  
8 that it's going to vindicate some public interest or - I  
9 don't know you do with a 2019 statement on a public record,  
10 but whatever it is, that's not what Garlock's intended  
11 purpose is. Garlock wants to be able to access these  
12 statements for the specific purpose of then suing a law firm  
13 saying that in another proceeding, unrelated to the  
14 bankruptcy, that law firm lied. And that's Garlock's word,  
15 lied. That's the information that is in Garlock's motion.  
16 We're going to prove that somebody lied. I don't know how  
17 much more scandalous something could be. There's no  
18 allegation by Garlock that someone in fact lied and that  
19 these statements are going to verify that lie. The statement  
20 by Garlock is, We want to use these statements to prove that  
21 someone lied. We don't have any evidence that there was a  
22 lie, but our theory is, they lied and therefore we're going  
23 to access these document and harass somebody, bring a law  
24 suit, whatever the words are, by then proving that they lied.  
25 That is not the purpose for disclosure of a 2019 or any other

1 type of information.

2 MR. CASSADA: I think some of the concepts, Your  
3 Honor, are a little misdirected there. The purpose of the  
4 2019 statements has no bearing on whether there's a public  
5 right to access, and Garlock's purpose -

6 THE COURT: I don't disagree.

7 MR. CASSADA: - if you read the motion, it was that  
8 Garlock seeks this to determine whether people - we use the  
9 word lie, impeach works, the purpose is to look at the 2019  
10 statements to see if they impeach statements made elsewhere.  
11 Your Honor, the possibility that Garlock might use the  
12 statements as evidence against the interest of claimants,  
13 it's not a harm that would prohibit public access. It's just  
14 the opposite, Your Honor.

15 THE COURT: But, Mr. Cassada -

16 MR. CASSADA: The fact that Garlock or any member of  
17 the public would look at a public record and might be able to  
18 impeach the people who filed those public records, Your  
19 Honor, that is a public good.

20 THE COURT: Mr. Cassada, you're assuming, you make,  
21 I think, an invalid assumption, that the Rule 2019 statements  
22 are the equivalent of a proof of claim, and they're not.  
23 They're not signed by a creditor. They're not signed by a  
24 lawyer on behalf of the creditor. They're signed by the  
25 lawyer on behalf of the law firm. It says, We represent X-

1 people. The creditors, in order to show that they have a  
2 claim in the case have to do something affirmatively in these  
3 cases that happened to vote, they had to submit a ballot.  
4 These statements, the 2019 statements aren't evidence that a  
5 creditor has filed a false claim against Garlock. They're a  
6 statement by a lawyer that says we represent these folks.

7 MR. CASSADA: That's correct, Your Honor.

8 THE COURT: Okay.

9 MR. CASSADA: And we're not saying otherwise, and it  
10 doesn't matter how we interpret them. They say what they  
11 say.

12 THE COURT: I agree, they say what they say, but  
13 Garlock's express purpose is to use this as a tool to prove  
14 that someone lied when you have no evidence that's submitted  
15 to say that someone did lie or to show me how these  
16 statements are going to advance that action. The ballots,  
17 maybe they do, they're statements by the creditor. These  
18 2019 statements are not statements by the creditor.

19 MR. CASSADA: Well, Your Honor, the statements are  
20 statements by law firms that the people listed are creditors.

21 THE COURT: That they represent them.

22 MR. CASSADA: Many of them are much more specific  
23 about that. There are statements by law firms stating, I  
24 have personal knowledge that these folks were exposed to and  
25 injured by the products of their respective debtors.

1 THE COURT: That's what the ballots say.

2 MR. CASSADA: That's what the 2019 statements say.

3 THE COURT: That I have personal knowledge that  
4 these creditors were exposed to a product - that a lawyer is  
5 going to say, I have personal knowledge that my client was  
6 exposed to a product?

7 MR. CASSADA: That's what a lot of the 2019  
8 statements say, Your Honor.

9 THE COURT: Okay.

10 MR. CASSADA: In tort system discovery it's the law  
11 firms themselves answer discovery as well. Now, I might  
12 remind the Court that also included among the exhibits filed  
13 are forms of exemplars.

14 THE COURT: Yes, there are.

15 MR. CASSADA: And in these exemplars these are  
16 statements that their clients have authorized them to appear  
17 in the bankruptcy case.

18 THE COURT: Yes.

19 MR. CASSADA: Okay. So, Your Honor, again, the way  
20 that Garlock might use the 2019 statements and the way that  
21 you suggest is not an improper purpose recognized by any  
22 court in fact it's just the opposite. If a member of the  
23 public were to come in and to look at judicial records and  
24 find that they can impeach those records from other sources,  
25 again, that's a public good, that means that when law firms

1 and people file court records, they're going to be more  
2 careful to make sure that the records are accurate and  
3 honest. Again, that's the whole purpose for public access.  
4 So to brand that as an improper purpose is, Your Honor, we  
5 would submit that that's just not correct. It's completely  
6 wrong.

7 THE COURT: There are too many assumptions open, Mr.  
8 Cassada. That's the problem. In terms of vindicating the  
9 fact that somebody lied or impeached you have to look at what  
10 it is you're impeaching. The statement that you would be  
11 impeaching by access to the 2019 statement is that the law  
12 firm didn't represent the creditor. That's all these 2019  
13 statements say.

14 MR. CASSADA: Well, Your Honor, you can read the  
15 2019 statements for yourself and you can see what they say,  
16 but that doesn't matter here. We will use the 2019  
17 statements only in the way that we can use them and based  
18 only on what they say. That's all we can do, Your Honor, and  
19 I don't think that that's a concern of the Court.

20 THE COURT: It is. To the extent that there is an  
21 alleged improper use, this Court should not be providing  
22 access to records that contain, what I still believe is  
23 private information. Heck, even your doctor can't disclose  
24 to somebody else what the nature of your injury or your  
25 disease is under certain laws, and we've required the



1 creditor to state the nature of that or - not the creditor,  
2 pardon me, the law firm to state the nature of the disease  
3 simply to show that in fact they're potentially a creditor in  
4 the case. That information is not, I believe, available on  
5 the public record unless the creditor voluntarily puts it on  
6 the public record, and these statements are not statements by  
7 the creditor. They're statements by the law firm.

8 MR. CASSADA: They're statements by the law firms  
9 authorized by the creditors, Your Honor, and when creditors  
10 or tort claimants, whatever the nature of their claim might  
11 be, when they appear in public courts, they're required, Your  
12 Honor, to state their names and to describe the basis for  
13 their injuries.

14 THE COURT: Yes, they are.

15 MR. CASSADA: And these statements talk about the  
16 disease type. That's not private information, Your Honor.  
17 That's information that is on public records all over the  
18 country. Indeed it's required to be in public records all  
19 over the country. There's no diagnosis or -

20 THE COURT: No, Mr. Cassada, as to a specific  
21 individual, individual A files a lawsuit in a state court and  
22 says, I have mesothelioma; yes, that individual has filed a  
23 suit and put that at issue. The 2019 statements don't put  
24 the nature of the disease at issue. They true-up the fact  
25 that the law firm has the ability to appear on behalf of that

1 creditor who can then vote on the plan, and it's the vote on  
2 the plan that substantiates whether or not there's a creditor  
3 and what the nature of the injury is. It's simply a  
4 procedural tool to make sure that the entity who's voting the  
5 claim has the authority to do it and the ballot agents have  
6 been ordered by the courts to look at the 2019 authorization  
7 to make sure it impacts the creditor, who is being  
8 represented by a firm, gave that authorization. That's what  
9 the purpose is.

10 MR. CASSADA: Sure, Your Honor, but the purpose has  
11 nothing to do with whether the public is entitled to access.  
12 The question is, is there any reason not to give the public  
13 right to access and Your Honor has stated that the type of  
14 disease is private information and we've demonstrated that  
15 it's not.

16 THE COURT: No, you haven't demonstrated that it's  
17 not. You've demonstrated -

18 MR. CASSADA: There is no basis law for saying that  
19 that's private information. I know the Court -

20 THE COURT: Well, certainly there's a basis in law.  
21 People don't have to disclose the fact that they're sick to  
22 anybody unless they voluntarily choose to do it, and they  
23 haven't voluntarily submitted a 2019 statement, the law firm  
24 has.

25 MR. CASSADA: Well, they've asked law firms to come

1 into a bankruptcy case and represent them, Your Honor.

2 THE COURT: They have done that.

3 MR. CASSADA: Okay. So they're in federal court and  
4 there's no basis for them saying that a member of the public  
5 doesn't have access to understand who they are and what the  
6 basis for their claims is. There's no law at all supporting  
7 that and the purpose that Your Honor's concerned about is not  
8 the type of purpose that courts have called improper and  
9 refused to allow access for them. The fact is that the  
10 burden is on the law firms and the creditor clients to show  
11 that there's a basis under the law and there's -

12 THE COURT: Well then I need to hear from them to  
13 see whether there is because I understand your argument, Mr.  
14 Cassada.

15 MR. CASSADA: Okay, I'll yield - I don't know if we  
16 want to wait until the conclusion to have Mr. Worf move to  
17 admit our exhibits or whether you'd rather hear from the  
18 objectors first.

19 THE COURT: No, I think if you're going to offer  
20 exhibits, you should do it now.

21 MR. CASSADA: Okay, thank you, Your Honor.

22 THE COURT: Mr. Worf.

23 MR. WORF: Good morning, Your Honor. Richard Worf  
24 for Garlock Sealing Technologies. We distributed binders  
25 with the exhibits that we're going to offer and may Mr.

1 Werkheiser approach the Court?

2 THE COURT: Yes, please.

3 MR. ESSERMAN: Your Honor, this is Sandy Esserman  
4 for some of the firms. I don't know whether these are the  
5 exhibits on this desk or not, but nothing was tendered to us  
6 prior to this hearing and we haven't seen any of this.

7 THE COURT: All right. Well, let me have Mr. Worf  
8 identify and offer them and I will not admit them now. We'll  
9 let everyone have a chance to see what they are before, I  
10 guess, we can rule because with three binders there are a lot  
11 of pages that may have to be looked through, but go ahead,  
12 Mr. Worf.

13 MR. WORF: Thank you, Your Honor. These are  
14 exhibits that we offer to support the points that Mr. Cassada  
15 raised, that the kind of information Garlock is seeking here  
16 is not the kind that is protected by courts, nor is it the  
17 kind of information that would lead to a clearly defined  
18 serious injury or would fit within one of the other  
19 exceptions to 107 as the case law requires. First of all,  
20 Exhibit 1, these are examples of 2019 statements that were  
21 filed by the law firms that have appeared and objected.  
22 These are simply pulled from the public docket and are  
23 offered to support the point that Mr. Cassada said that the  
24 exhibits say what they say and here's what they say.

25 THE COURT: All right. What case are they from?

1 MR. WORF: Exhibit No. 2 is a summary of the  
2 statements and it summarizes which cases they are from and  
3 which law firms filed them and also contains a summary of  
4 some statements that are made therein. Exhibit 3 are  
5 examples of 2019 statements filed on public dockets by the  
6 Kazan, McClain; Brayton Purcell; and Waters & Kraus firms,  
7 which are three of the firms that have objected here.  
8 They're from the Plant Insulation and Thorpe Insulation cases  
9 and were filed recently. I believe some were filed in 2011,  
10 some were filed in, I believe, 2008, but their dates are  
11 indicated on the filings.

12 THE COURT: All right.

13 MR. WORF: They contain detailed information  
14 regarding the creditors, those firms represented in those  
15 cases, in some cases contain the home addresses of those  
16 creditors and contain the claimed disease type of those  
17 creditors. The next few exhibits are offered for the purpose  
18 of showing that the information is not the kind that courts  
19 protect. Exhibit 4 is an excerpt, 5 out of 37,194 pages of  
20 the FEC report filed by - the Federal Elections Commission  
21 report filed by Obama for America. These excerpts show the  
22 names of individual donors, their addresses, their, in some  
23 cases, occupations, and in some cases their employers.

24 THE COURT: I'm sorry, they're pages from what?

25 MR. WORF: The FEC report for Obama for America,

1     which is filed publicly and is a public record which I  
2     obtained from the internet and is something that the  
3     disclosure rules require Obama for America to file and which  
4     showed the information contained therein.

5             THE COURT: And how's this relevant to a 2019  
6     motion?

7             MR. WOLF: It shows that the information that is in  
8     the 2019 exhibits is not the kind that is protected or that  
9     would lead to any undue risk of identity theft.

10            THE COURT: Okay, the fact that a political action  
11     committee has to file a specific report that identifies  
12     donors is a little bit different in my mind from a Rule 2019  
13     statement, but okay.

14            MR. WOLF: Exhibit 5 is an individual's Chapter 13  
15     bankruptcy petition. I typed in a common name, William  
16     Smith. This one happened to be filed on February 4<sup>th</sup>, 2011 in  
17     this Court, the Delaware Bankruptcy Court. As the Court is  
18     well aware, these petitions show an individual's name, home  
19     address, detailed -

20            THE COURT: This is a debtor's bankruptcy filing  
21     petition?

22            MR. WOLF: Yes, Your Honor.

23            THE COURT: Okay. And that's relevant to a 2019  
24     statement because?

25            MR. WOLF: It again shows that the information

1 contained in the exhibits is not the kind the courts will  
2 protect and is not going to lead to any undue risk of  
3 identity theft. If the Court were to so find, individual  
4 debtors in cases like Mr. Smith's who would no doubt have a  
5 strong interest in protecting these documents from public  
6 view. A bankruptcy petition is, as the Court knows, a  
7 weighty matter that contains personal information and is  
8 something that many individuals would like to conceal.  
9 They're not - I pulled it from the public docket. Exhibit 6,  
10 this is a - I apologize for the length of this one, but I  
11 believe the length is important. It makes an important  
12 point. It is an 869 page extract from the Claims Register in  
13 In Re: American Business Financial Services, Inc., 05-10203,  
14 Bankruptcy District of Delaware. This shows the names and  
15 addresses of, I believe, thousands of individual creditors as  
16 well as, I believe, in many cases the amount of their claim,  
17 the other information that they were required to provide.  
18 This is also public and shows that the information in the  
19 2019 exhibits is not the kind that courts protect and not the  
20 kind that would lead to any undue risk of identity theft.  
21 Exhibit 7 is a news article that describes the American  
22 Business Financial Services' bankruptcy and describes some of  
23 the claimants in that bankruptcy and notes that many of the  
24 investors were individual investors in that case and were  
25 required to file proofs of claim and many were elderly. We

1 offer this for the fact that these were characteristics of  
2 those claimants and also to show that the public has an  
3 interest in knowing who claimants are in bankruptcy cases and  
4 this is a customary topic of public interest.

5 THE COURT: And this was something that Garlock got  
6 this information and did the news article or some news  
7 article, or news person representing a public interest got  
8 this information for publication purposes? How was it  
9 obtained?

10 MR. WOLF: Your Honor, this news article is a public  
11 news article. I don't recall the publication. I believe it  
12 was a publication from Philadelphia.

13 THE COURT: All right.

14 MR. WOLF: Exhibit 8 is a list pulled from the  
15 internet also of pending cases in the federal Mardock  
16 proceeding which is an MDL in the Eastern District of  
17 Pennsylvania concerning maritime asbestos cases and this  
18 shows the names of thousands of asbestos personal injury  
19 claimants on that docket. This is also publicly available  
20 and again shows that this information about personal injury  
21 claimants' names is not the kind that is protected or the  
22 kind that leads to an undue risk of identity theft.

23 THE COURT: And are the diseases listed?

24 MR. WOLF: They are not in this particular document,  
25 but of course, every one of the complaints in that proceeding



1 is, I believe, also public and would customarily contain  
2 allegations regarding disease.

3 THE COURT: So there are complaints that have been  
4 filed.

5 MR. WOLF: Yes, Your Honor.

6 THE COURT: All right.

7 MR. WOLF: That's how the cases got to the Mardock  
8 proceeding.

9 THE COURT: Okay.

10 MR. WOLF: Exhibit 9 is a list of pending cases in  
11 the Texas MDL, also pulled from the internet showing the  
12 names of thousands of asbestos personal injury claimants.

13 THE COURT: Okay.

14 MR. WOLF: Offered for the same purpose. We mention  
15 in our motion that the objecting law firms concede that  
16 Garlock should have access to the ballots and just for the  
17 completeness of the record we wish to offer the master  
18 ballot, the Thornton & Naumes firm filed in In Re: Pittsburgh  
19 Corning. This shows the names of the claimants and their  
20 claimed asbestos-related disease.

21 THE COURT: This is Exhibit 10?

22 MR. WOLF: Yes, Your Honor.

23 THE COURT: All right.

24 MR. WOLF: This also goes to the same points I've  
25 been discussing. Exhibit 11 is a collection of five

1 documents which are documents that show the public interest  
2 and concern regarding the suppression of evidence about  
3 exposure to bankrupt products. They are offered for that  
4 purpose of demonstrating that this is a topic of intense  
5 public concern and is one that the public is entitled to  
6 investigate and vindicate. Exhibit A is an article entitled  
7 Toxic Justice.

8 THE COURT: These are articles written and submitted  
9 by Garlock?

10 MR. WOLF: No, Your Honor, these are articles that  
11 are written by various publications as indicated on the  
12 exhibit.

13 THE COURT: All right.

14 MR. WOLF: Exhibit A is from the Dallas Observer.  
15 It was published a number of years ago and the publication  
16 quoted a former Baron & Budd product identification paralegal  
17 who, quote, "Insists that for certain periods of time when  
18 tactical reasons dictated, it was better not to have exposure  
19 to a bankrupt company's products. Identification of those  
20 products was discouraged." Again offered not for its truth  
21 but for the public concern in this issue. Exhibit B, article  
22 is Trust Busted and Kiahoga Comeuppance from the Wall Street  
23 Journal recounting the discovery of inconsistent exposure  
24 stories told by the Brayton Purcell and Early Lucarelli firms  
25 in the tort system and to asbestos personal injury trusts.

1 Again, offered to demonstrate the public interest in this  
2 topic not for their truth. Exhibit C, a letter from  
3 Congressman Lamar Smith to the GAO requesting an inquiry into  
4 the transparency of asbestos trusts in part because of  
5 concern regarding inconsistent exposure stories. It's hard  
6 to think of a greater sign of public interest than a high-  
7 ranking congressman saying that the topic deserves studying.  
8 Exhibit D, Double Dippers, this is a story from Forbes  
9 recounting the case from Cleveland and also another case  
10 where the case was dismissed because of failure to disclose  
11 trust claims that contained unfavorable exposure evidence,  
12 again showing public concern. And finally, Exhibit E, New  
13 Generation of Asbestos Trusts Encourages Double Dipping.  
14 This is an article by Mr. Cohn, and I believe the title  
15 speaks for itself. We also had a number of exhibits attached  
16 to our motion and reply that we'd like to offer, many of  
17 which are similar to the ones I've discussed. We offer  
18 Exhibit D, which is the -

19 THE COURT: I'm sorry, these were attached to what?  
20 I'm sorry.

21 MR. WOLF: These were attached to our motion and  
22 reply and they are also in the binders in Binder 3 of 3.

23 THE COURT: All right. And what was the first one?

24 MR. WOLF: Exhibit D.

25 THE COURT: Are you saying "B" as in boy?

1 MR. WOLF: D as in dog.

2 THE COURT: Thank you.

3 MR. WOLF: This is the Baron & Budd 2019 statement  
4 in Pittsburgh Corning offered to show that it says what it  
5 says. Exhibit E, the Waters & Kraus 2019 statement in  
6 Pittsburgh Corning, offered for the same purpose. Exhibit I,  
7 as in igloo, this is the order granting access to 2019  
8 statements in the Owens Corning case. Exhibit J is the 2019  
9 order from In Re: Congoleum. Exhibit K is the Waters & Kraus  
10 2019 statement in the Congoleum case, again putting on the  
11 public record more than the information contained in the  
12 exhibits Garlock is seeking today. Exhibit L is the  
13 complaint in Polar v. ACandS showing that among other things,  
14 asbestos personal injury claimants are required to put their  
15 disease allegations on the public docket in cases that they  
16 file, and it is something that is not protected in asbestos  
17 litigation. Exhibit M is an interrogatory response in -

18 THE COURT: M as in Mary?

19 MR. WOLF: Yes, Your Honor.

20 THE COURT: Okay.

21 MR. WOLF: This is an interrogatory response in  
22 Foster v. Kantora (phonetical) containing detailed  
23 disclosures.

24 THE COURT: What is that case?

25 MR. WOLF: Foster v. Kantora.

1 THE COURT: Yes, but where is it pending?

2 MR. WOLF: I believe this was a Texas case.

3 MR. WOLF: A state court case?

4 MR. WOLF: Yes, Your Honor.

5 THE COURT: All right.

6 MR. WOLF: Again showing all the information that is  
7 contained in the 2019 exhibits disclosed in a state court  
8 asbestos case. Exhibit N, as in no, the voting procedures in  
9 Pittsburgh Corning. Then Exhibit O, the Motley Rice firm's  
10 2019 statement in the Quigley case, and finally, Exhibit B to  
11 our reply is the order unsealing 2019 statements in the  
12 Accuride case in the Delaware court. Thank you, Your Honor.

13 THE COURT: All right. How much time, folks, will  
14 you need to take a look at these exhibits and determine  
15 whether you have any objection to the admission and whether  
16 you're going to be submitting something supplemental?

17 MR. ESSERMAN: Sandy Esserman. I'm just one person  
18 among others, but most of these exhibits seem to me to be  
19 improper, I'm not sure they're probative of anything. To the  
20 extent that they're public documents that are filed within  
21 this Court, I think the Court can just take judicial notice  
22 of them. I'm not sure what's been filed under seal and what  
23 hasn't been filed under seal. If they're public documents,  
24 it's one thing, nevertheless, I'm not sure they're probative  
25 of anything in connection with this motion especially some of

1 these articles which are just rank hearsay and allegations  
2 that someone is writing, someone with an agenda similar to  
3 Garlock is writing various articles on various things. I'm  
4 not sure that's proper evidence or probative of anything  
5 other than someone's got an agenda that Garlock likes. So, I  
6 guess the proper answer to Your Honor's question is, I would  
7 think we'd need some time to confer among ourselves before we  
8 would have a specific rendition, but I do think it's improper  
9 that these things are sort of dumped on us at the hearing the  
10 day of the hearing.

11 THE COURT: All right. I think what I'll do is hear  
12 the arguments in response and then perhaps work out a time  
13 frame on which objection and if you're going to submit  
14 anything of your own by way of exhibits, they can be  
15 submitted, and Garlock, if it has any objections to those can  
16 be addressed and maybe we'll just continue the matter till  
17 the next hearing to give time to have all that happen, but  
18 let me hear the rest of your arguments in response and you  
19 folks, we'll take a short recess after that to talk to see  
20 whether that process may work.

21 MR. ESSERMAN: Thank you, Your Honor. This is Sandy  
22 Esserman. I think there's going to be several people that  
23 are going to be speaking in opposition to the motion so, I  
24 guess I might as well kick it off, but I know Ms. Ramsey and  
25 Mr. Lockwood also have various things to say. We, of course,

1 oppose the motion. We've stated so in our papers. I'm not  
2 going to address the closed cases issues. Those are closed.  
3 I don't think they've moved to properly open them. I also  
4 think that there's a standing issue as to what standing  
5 Garlock has to come in here and to seek what they're seeking.  
6 I know Your Honor sort of went through this a year ago and  
7 entered a very specific order in the Pittsburgh Corning case  
8 in which Garlock sought access to 2019 and it was - Your  
9 Honor's words were very specific and Your Honor stated the  
10 motion was denied without prejudice to a request for access  
11 to information contained in a specific 2019 statement as to a  
12 particular client in specific instances or of need or cause.  
13 I don't think we've heard anything of need or cause here  
14 other than the fact that Garlock wants to continue engaged in  
15 either a fishing expedition in which they are seeking  
16 information to sue people in their case. None of this  
17 information they're seeking has anything to do with the cases  
18 in which the information was filed, that is in Pittsburgh  
19 Corning, in Owens Corning, and any of the cases Garlock has  
20 no standing as a creditor. Garlock isn't seeking to object  
21 to a plan. In the last go-round where Garlock wanted access  
22 to the 2019 statements, they were allegedly seeking an  
23 objection to a plan and they thought they might have standing  
24 to file an objection. It appears that they've now completely  
25 abandoned the issue that they actually have standing to do

1 anything and are not strictly going under some sort of public  
2 right, public access statement. I think Garlock completely  
3 misunderstands what Your Honor did with 2019 and what they're  
4 trying to do is recreate 2019 in their image and what they  
5 want it to read and what they'd like it to read. Your Honor  
6 recalls that we had many, many hearings over many days over  
7 what is really, one could argue, a collateral rule to the  
8 reorganization of 2019 and Your Honor forged, listened to  
9 lots of argument, days of arguments in which we'd come back  
10 and Your Honor finally crafted an order after thinking about  
11 it very carefully as to what to do and how to balance the  
12 rights of people with personal and private information to put  
13 on the public record versus 2019, and Your Honor's order, I  
14 think, has been frankly given legs. It's been given legs by  
15 the Appellate Courts, the District Courts and the Courts of  
16 Appeals that have approved Your Honor's order. Interestingly  
17 enough, the order was entered in by the Judge sitting in  
18 Garlock's bankruptcy, it was the same exact order that Your  
19 Honor has entered in which Your Honor is trying to balance  
20 the rights of parties to have access versus the purpose of  
21 the rule, and the purpose of the rule really is, as Your  
22 Honor stated early, it's an agency rule, it's, Does a lawyer  
23 have the right to represent this client in a case. 2019 is  
24 not a specific order, not a specific rule which is absolutely  
25 fixed. 2019 really doesn't fit in a mass tort concept text.



1 Justice Ruth Bader Ginsburg, when she sat on the appellate  
2 courts, when she was still serving as a Judge in the Court of  
3 Appeals for the DC Circuit noted that, quote, "Courts have  
4 taken different views of how literal compliance with Rule  
5 2019 must be." And some courts have taken a view that 2019  
6 in a mass tort context doesn't fit and doesn't necessarily  
7 need to be complied with. Other courts have taken different  
8 views of that, and frankly, I think, the courts are trending  
9 towards an order that Your Honor has entered in the various  
10 cases, most of which, as Your Honor noted, cases are done and  
11 over with. Garlock of course wants what information it can  
12 to create whatever mischief it wants to try and create and  
13 can create, of that we have no doubt. So, not only do we  
14 know that Garlock is here not as a vindicator of public  
15 rights. We know from their own papers that Garlock has an  
16 agenda. Looking at the exhibits that Garlock is trying to  
17 introduce as evidence, evidence of what one can only guess,  
18 but I think Garlock is back into the days of asbestos is good  
19 for you. It should be eaten at breakfast, lunch, and dinner.  
20 There is nothing wrong with this thing. It's just a fraud  
21 being committed by plaintiffs' lawyers and democrats and  
22 people that donate to the Obama campaign and that this whole  
23 thing is just a big fat lie, and that's really what this  
24 whole thing is about. It is about a subterranean agenda that  
25 has nothing to do with the rules that Your Honor has stated

1 very carefully and cautiously in this Court and the rules  
2 that are governed and frankly the rules of privacy and  
3 getting someone's name on the public record as to whether  
4 someone has a disease or not, they could care less about.  
5 What they'll tell you is, Well, this information is already  
6 out there. It's out there somewhere else and therefore, it's  
7 not to be protected. Well, if it's out there, it's out  
8 there. There's nothing that anyone can do about that and if  
9 Garlock wants to go search all the public cases, all the  
10 other public cases then they've got the records that they  
11 need, and I don't know why they would necessarily have a need  
12 for this. What they're trying to do is they're trying to  
13 have it all neatly wrapped up so they don't have to go  
14 anywhere else, so they can have a nice searchable database  
15 that they can use for their own purposes and their own  
16 mischief.

17 THE COURT: Well, but do they have that right? I  
18 mean, that's the problem with the decisions. It seems to me  
19 that there is a pretty strong presumption, and frankly there  
20 should be of a right to public access for information in  
21 civil cases and bankruptcy cases. There's really no reason  
22 to keep most information hidden or secret. Bankruptcy abhors  
23 things that are not disclosed for the general proposition.

24 MR. ESSERMAN: Agreed, agreed.

25 THE COURT: But in this instance, I think this - not

1 just this Court but many courts have looked at this 2019  
2 issue and it seems in my view, as you know, to be mandatory.  
3 So trying to meld it to fit in a mass tort context isn't  
4 easy. So, I thought that there was some basis for what I had  
5 done. I think the appellate courts say - I'm not sure they  
6 really looked at the 2019 information itself. They looked at  
7 the process and felt that the process was all right, but now  
8 Garlock's here saying they're a member of the public and they  
9 want this information because they're a member of the public  
10 not for anything, supposedly, just because they're a member  
11 of the public. Well, how do I deny public access to a member  
12 of the public?

13 MR. ESSERMAN: Well, for one thing, Your Honor  
14 provides in your prior orders in this exact same circumstance  
15 that access can be granted to a specific 2019 statement, as  
16 to a particular client in specific instances of need or cause  
17 and what Garlock's trying to do is they're trying to turn  
18 that on its head and say it is on the head of the victim to  
19 prove that its public record information need not be  
20 disclosed rather than Garlock setting forth as to a  
21 particular client in a particular instance of need or cause  
22 as Your Honor has stated in the order. So, what they're  
23 trying to do is they're trying to recreate the orders of Your  
24 Honor in their own vision to provide for something that is  
25 not there and they're trying to redraft Your Honor's orders

1 that have already been entered in these cases and in this  
2 particular case. So I think just on the orders that have  
3 been entered in this Court there has not been any kind of -  
4 number one, they haven't asked for a specific 2019 statement  
5 as to a particular client and they haven't shown a need or a  
6 cause. Now, if Your Honor says you want to rewrite that  
7 order, I guess that's your right, but that's what the order  
8 says that Your Honor has already entered, and once again, we  
9 went through the issues of whether or not access should be  
10 granted - really what Garlock's arguing is, it's not a  
11 question of access, it's that these 2019 statements with the  
12 sensitive information that is contained therein needs to be  
13 on a public record. They're really trying to reargue Your  
14 Honor's order that is already in place in the case. They're  
15 really trying to say that needs to be public. That needs to  
16 be put on the public record, and I think we've already gone  
17 through that argument, and I think that there is some *stari*  
18 *decisis* here. I think that the Court has ruled. I think the  
19 appellate courts have looked at the issue and they certainly  
20 didn't find anything necessarily wrong with the procedures  
21 that Your Honor has undertaken, but what Garlock really is  
22 saying is, We want these 2019 statements on the public  
23 record. We want the order that Your Honor entered in all  
24 these cases to be stricken after the order has not only been  
25 filed but been complied with and we want that order to be

1 changed. We don't like that order and I think that there are  
2 certain standing issues that Garlock has and has not  
3 overcome. Garlock is not a creditor. Garlock doesn't  
4 purport to be a creditor. Garlock hasn't filed a proof of  
5 claim. Garlock has shown no interest but an interest to file  
6 lawsuits and to try and catch people in lies, and I think  
7 they're trying to recreate orders that this Court has entered  
8 after extensive notice to many, many people and many firms  
9 and many claimants over the past, I think, five or six years.  
10 So I think they're trying to engage in not only revisionist  
11 history but they're trying to rewrite history here and as  
12 long as the orders of this Court have stood, I think they've  
13 stood for a proper purpose, and that Your Honor has tried to  
14 balance those rights and I think that that balancing in those  
15 orders should continue. 2019 is, frankly, much ado about  
16 nothing. 2019 is not, as Your Honor pointed out in previous  
17 hearings, whether someone's even going to file a claim with a  
18 trust. 2019 is not whether or not someone is even going to  
19 vote. 2019 is something that was created by this Court, the  
20 interpretation of 2019, to try and fit into a mass tort  
21 context in an individualized basis and it's strictly a rule  
22 of agency. It's almost a rule of convenience that says, This  
23 law firm has a right to act and potentially vote for these  
24 people. And Your Honor required certain information to be  
25 put on that 2019 which is relatively sensitive information,

1 disease information. Whether someone is publicly recognized  
2 in a convenient searchable database for telemarketers, for  
3 whoever, for insurance salesmen, or for Garlock it was not  
4 the purpose of Your Honor. Your Honor could just as easily,  
5 if Your Honor's going to redo the 2019 orders and make them a  
6 public access, order all that information put on the public  
7 record, but strike certain information that is sensitive.  
8 Say, okay, we're going to put the 2019s of record, but we're  
9 going to strike all the information about who's got what  
10 diseases and that sort of thing, and we're not going to have  
11 any kind of sensitive personal information, any kind of  
12 addresses, any kind of social security numbers. Your Honor  
13 has the power and had the power back when those orders were  
14 entered, at least had the power then to provide for a 2019  
15 order that did that, but Your Honor was trying to forge a  
16 compromise to get certain information on the record if  
17 needed. So, frankly, if anything, if the 2019 orders are re-  
18 struck, I think that they would be re-struck in a completely  
19 different way to eliminate any kind of that type information.  
20 Then filed on the public record, who cares, but that's not  
21 what Your Honor did. I think we need to respect people's  
22 privacy. I think that the appellate courts would and I think  
23 the courts around the country have seen how Your Honor's  
24 handled these cases, has respected that, and has followed it.  
25 And I'll let my other colleagues respond.

1 THE COURT: All right, and thank you. Ms. Ramsey.

2 MS. RAMSEY: Good morning, Your Honor. I will try  
3 to not reargue the points that Mr. Esserman made, but I do  
4 want to adopt them. The Third Circuit is clear that the  
5 right to public access is not absolute and that the  
6 presumption can be balanced and should be balanced against  
7 litigating factors. The Court asked, How does the Court rule  
8 against the presumption in this case? There are four reasons  
9 that we contend that you should rule against it. The first  
10 is that some of the individuals who are listed on the  
11 exhibits to the Rule 2019 statements are not parties in the  
12 case and never were parties in the case, never took any  
13 action to become parties in the case, and their rights never  
14 were adjudicated in the case. This is part of the hybrid  
15 unusual compromise that the Court reached with respect to the  
16 difficulty between Rule 2019 and the peculiar truth of an  
17 asbestos bankruptcy case which is that many of the claimants  
18 are still at a point in their case where they're evaluating  
19 whether or not they have a claim and which defendants they're  
20 going to pursue, and so, this Court's orders and the dialogue  
21 that the parties had with the Court at the time the orders  
22 were entered made clear that the exhibits are going to be  
23 over-inclusive. They are going to reflect any individual  
24 represented by a law firm that that law firm believes might  
25 have a claim against that debtor in the future or the trust

1 to be created under that bankruptcy plan, and as a result, as  
2 time goes on, these Rule 2019 statements are amended and  
3 modified to reflect both individuals who drop off that list  
4 and individuals who are added to that list, but it's a  
5 preservation pleading. Those individuals, because they are  
6 listed, the ones that do not take further action, are  
7 entitled to a heightened level of protection, we contend, and  
8 their information should not be out there because it wouldn't  
9 have been filed in a public proceeding in the first place but  
10 for the unusual nature of this kind of case. So, in the  
11 first instance, our argument is that because there are a  
12 significant number of non-parties on that list, that  
13 information should be protected. The second is the purposes  
14 of Rule 2019 themselves. As the Court has said, Rule 2019  
15 has a very specific purpose and that is to make the parties  
16 in the case aware of who a law firm represents so that they  
17 can deal with that law firm on that basis. The request that  
18 Garlock has made has nothing to do with the purposes of 2019.  
19 It has nothing to do with the representation by a law firm of  
20 certain claimants in the underlying cases, and as a result  
21 the request should be viewed as different in kind than the  
22 kind of request that is made for public access when there are  
23 in fact public concerns, policy concerns at issue. A related  
24 point is the use that the Court makes of that information.  
25 In the Second Circuit's decisions in the leading case of



1    Amodeo 71 F3d 1044, the Court stated that the weight to be  
2    given the presumption of access has to be governed by the  
3    role that the material issue plays in the proceeding itself  
4    and in the U.S. vs. Cushner case out of the District of New  
5    Jersey, 349 F2d 892, the Court discussed the continuum  
6    between those documents that are crucial in the Court's  
7    exercise of its duties and those documents that don't have a  
8    material role in the case, and the District Court found that  
9    the strength of the presumption as to those documents that  
10   have less relevance to the Court's functioning should fall  
11   toward the weaker end of the continuum until at some point  
12   they're not judicial documents at all. And with respect to  
13   the 2019, it is precisely that type of document. It has a  
14   very limited role in the functioning of an asbestos  
15   proceeding, and as a result, it should not be given the same  
16   type of material weight that a document or a pleading that  
17   has an effect on the outcome of a case would be provided.  
18   The third reason, Your Honor, is that there is a very strong  
19   countervailing presumption of privacy of personal interests  
20   in the Third Circuit jurisprudence. In the Court's decision  
21   in United States vs. Smith at 776 F2d 1104, the Third Circuit  
22   upheld the District Court's sealing of a bill of particulars  
23   which listed the names of unindicted individuals who in the  
24   opinion of the U.S. Attorney conceivably may have been co-  
25   conspirators, but in light of the less exacting standard for

1 being named a co-conspirator on such a list, the Court  
2 acknowledged that the public disclosure had the potential to  
3 destroy the careers of innocent individuals and viewed  
4 countervailing privacy and reputational interests as  
5 sufficient to overcome the presumption of right to access.  
6 Here, Garlock has volunteered, as the Court has recognized,  
7 what use it intends to make of this information. It intends  
8 to take a statement by a law firm, which is made following  
9 the language of Rule 2019 which is not ideal in this  
10 circumstance and use it to try to challenge or portray as a  
11 lie statements made by claimants in interrogatory answers and  
12 other discovery and in so doing it intends to accuse those  
13 claimants of fraud or lying or misrepresentations and the  
14 reputational and privacy interests of those individuals  
15 should overcome the presumption of right of access,  
16 especially given the improper use that Garlock intends to  
17 make of the information, and that also would be the standard  
18 under Kaiser, and furthermore, the intended use is relevant  
19 when it clearly suggests an improper motive and use.  
20 Finally, Your Honor, the fourth point that I would make is  
21 that there are alternatives. As the Court recognized in  
22 Pittsburgh Corning about a year ago when a creditor files a  
23 ballot or now when a trust plan is made, when there is some  
24 affirmative action by the creditor which reflects an  
25 intention to act in the case, that information perhaps can be

1     used by Garlock to make the kinds of arguments that it makes  
2     if it can find inconsistencies and positions, but that  
3     information is on the public record. It is an alternative  
4     and Garlock is not deprived of its opportunity to look  
5     through the information and assess whether or not it can make  
6     such an argument based upon information that has not been  
7     protected by the same kinds of protections as your 2019  
8     orders. For those four reasons, Your Honor, we believe that  
9     the presumption of access is overcome under these specific  
10    factual circumstances and that Garlock's motion should be  
11    denied. Thank you.

12                 THE COURT: Mr. Lockwood.

13                 MR. LOCKWOOD: Just a few brief points. I think Mr.  
14    Esserman and Ms. Ramsey have pretty much covered most of the  
15    legal aspects of the case, Your Honor, and I don't want to  
16    repeat that. A couple points specifically. Mr. Cassada  
17    indicated that he didn't think the Committees that I  
18    represent have standing to oppose this. The Committees I  
19    represent are in four open cases that he's made motions in.  
20    They are statutory parties in interest in all of those cases  
21    and although Mr. Esserman and Ms. Ramsey more than  
22    competently represent the interests of the individual law  
23    firms and their clients that they represent there are large  
24    numbers of law firms and clients who they do not represent in  
25    those cases, and the Committee is the official committee to

1 represent the interests of present asbestos claimants who are  
2 precisely the people whose 2019 statements' access is being  
3 sought with respect to. So I submit there really isn't any  
4 reasonable doubt that the Committee has standing to appear  
5 and be heard and support the oppositions of Messrs. Esserman  
6 and Ramsey. As Your Honor noted to Mr. Cassada in a number  
7 of occasions, virtually all of the arguments about why the  
8 information that they seek here should be open to the public  
9 because that information is routinely provided in other  
10 contexts depend on two propositions. One is an analogy to  
11 the filing of a 2019 statement by a lawyer as to who his  
12 clients are to the filing of a proof of claim or a master  
13 ballot or a complaint in a civil lawsuit or in somewhat more  
14 far-reaching analogies, the giving of political contributions  
15 subject to the Federal Election Commission Rules, but that  
16 premise really is false because in those instances the client  
17 has in effect decided to waive what privacy the client might  
18 otherwise be entitled to with respect to whatever the  
19 information it's disclosed in a complaint as if you will  
20 overridden by the client's need to obtain redress through the  
21 judicial system. The client is affirmatively trying to  
22 invoke the rules of our legal system and in so doing has got  
23 to disclose who the client is and in some instances where the  
24 client lives, et cetera. But the filing of a 2019 statement,  
25 as Your Honor has noted and as my co-counsel have pointed out

1 here, is an entirely category of animal. It's done for the  
2 purpose of allowing the parties to an active bankruptcy case  
3 to know when a lawyer gets up in front of the Court and says,  
4 I represent clients here, who the clients are and it is not -  
5 Mr. Cassada made a great deal out of the language in the rule  
6 that talks about creditors, but what the lawyer is doing is  
7 not making sort of a backdoor proof of claim to be a creditor  
8 when he identifies his clients. He's just trying to make  
9 sure that everybody has full disclosure of all the people  
10 that he represents who might file claims and I think it's  
11 beyond dispute if one actually compared 2019 statements with  
12 ballots that not all of the people who are identified in the  
13 2019 statements ultimately proved to actually appear in the  
14 case. Indeed, as I think Your Honor is aware, it has been  
15 the practice of many lawyers in many cases, both mass torts  
16 and otherwise, to file requests to be put on the Rule 2002  
17 notice list, and they do that simply because they have an  
18 interest in knowing what's going on in the case because it  
19 might affect their clients in some way or another, and the  
20 way Rule 2019 is written, the mere fact of filing a request  
21 for 2002 notice could be read as entering an appearance on  
22 behalf of the clients that you're wanting to get notice for.  
23 Well, that's a far cry from voting or filing a proof of claim  
24 and yet when Your Honor, as Mr. Esserman pointed out earlier,  
25 was grappling with the issue of how to make 2019, which on

1 its face talks about committees and ad hoc committees and it  
2 doesn't really focus on lawyers. I mean the only reason we  
3 get in here is because a law firm is an, quote, "entity",  
4 close quote, and therefore, under the literal reading of the  
5 rule, if an entity represents more than one creditor it's  
6 presumptively required to file a 2019 statement. There was  
7 an interesting case that we cite in our papers from the  
8 District of Delaware that goes through the history of the  
9 origin of Rule 2019 in which the Bankruptcy Court decided  
10 that an ad hoc committee didn't even have to file a 2019  
11 statement. Presumably that ad hoc committee was represented  
12 by a lawyer, and therefore, if being represented by a lawyer  
13 who had more than one client, i.e., the members of the ad hoc  
14 committee, was enough to require a filing of a 2019  
15 statement, then that decision was presumptively wrong, and I  
16 think Mr. Esserman is correct asking Your Honor to consider  
17 Garlock's motion is in effect an effort to have a redo of the  
18 original hearing because while it's true that Your Honor  
19 said, You can make a motion and I'll consider it, if the rule  
20 was that any member of the public had a right to see a 2019  
21 statement, then Your Honor essentially is being said that all  
22 the motion has to say is one word, "gimme", because otherwise  
23 why would they have to file a motion. Presumably you have to  
24 file a motion to make some kind of a pitch, if you will, to  
25 the Court as to why the relief that you're seeking by a

1 motion is appropriate and Garlock's essentially making the  
2 argument that no motion should be necessary because there's  
3 nothing in the 2019s that by any stretch of the imagination  
4 could possibly be regarded as confidential. And that leads  
5 me to the second premise that Garlock has been operating on  
6 here which is that all we're talking about is names and  
7 addresses. What Mr. Cassada accurately described at the  
8 beginning of his argument was how the 2019 statements were  
9 set up. There's a statement, but all the information with  
10 respect to the clients is on the exhibits and the exhibits  
11 are spreadsheets and while it's true they contain the names  
12 and addresses which is what Mr. Cassada's argument was  
13 focusing on, the very same spreadsheets also contain disease  
14 information and copies of the retention agreements, albeit in  
15 exemplar form, but the fact of the matter is that in the  
16 normal course of events, certainly nobody who has chosen not  
17 to file a proof of claim or who's decided not to vote on the  
18 case would be required simply because Garlock was inquisitive  
19 to tell Garlock what disease they might be suffering from and  
20 keeping in mind that Garlock, unlike some other movants that  
21 you've had before yourself is not asking for 2019 statements  
22 for an identifiable group of people that have filed claims  
23 against Garlock. They're not limiting it. They're asking  
24 for 2019 statements for every law firm and client that has  
25 appeared in 12 bankruptcy cases which amount to probably

1 hundreds of thousands of people, and by no stretch of the  
2 imagination, hundreds of thousands of people have ever filed  
3 claims against Garlock. So, to that extent they're going way  
4 beyond anything that other people, such as in the Bondex case  
5 have attempted to have a more focused approach to this, and  
6 the retention agreements, I would urge, come under 107(b).  
7 I mean, a lawyer's practice in the type of retention  
8 agreement that he enters into with a client could even be,  
9 under some circumstances, attorney/client privilege but in  
10 any event -

11 THE COURT: You have a tough argument with that one  
12 in the Third Circuit.

13 MR. LOCKWOOD: I understand that, Your Honor, but at  
14 a minimum that information is not available in the tort  
15 system when you file a complaint. Your opponent doesn't get  
16 to ask his adversary for their retention agreement, and the  
17 law firms are all competitors to one another in competing for  
18 clients and presumably the terms of their retention  
19 agreements might or might not be used amongst themselves for  
20 competitive reasons and once Garlock gets ahold of the  
21 information, there's no restrictions on what Garlock can do  
22 with it. One rather suspects that it will wind up on  
23 somebody's database that will be used in Garlock's bankruptcy  
24 in some way or another. So, there's been no effort to do  
25 that, to eliminate that, so, what we wind up having to do, if



1 I'm right in this argument, is redact the exhibits that are  
2 attached to the 2019 statements, to segregate the names and  
3 addresses which Garlock urges, you know, are like the white  
4 pages of the telephone directory, although even in the white  
5 pages you don't have to actually agree to be listed, from the  
6 other information which is not readily available to people in  
7 the tort system who file claims. It's not readily available  
8 to people who file proofs of claims in a bankruptcy case.  
9 It's not readily available even to people who vote in a  
10 bankruptcy case. The retention agreement thing is only for  
11 the purpose of 2019 and it's only for the purpose of showing  
12 your authority to act for that client in that bankruptcy  
13 case, and so, I would urge the Court to consider in the  
14 public access argument that you really - they're asking for a  
15 unitary document that contains stuff that is confidential and  
16 that it would be a gross imposition on the debtors and maybe  
17 the Court, I'm not sure at this point who would go about  
18 redacting the CDs that, as I understand it, are in the  
19 Clerk's Office to differentiate between names and addresses,  
20 which are sort of tossed off as non-private and the other  
21 information which is private. And, let me see, that may be  
22 all I have, Your Honor. Oh, the only other point I would  
23 make is that, as Your Honor has said, they have access to the  
24 ballots. So if they're really interested in finding out  
25 people who have voluntarily decided to assert - the client

1 has voluntarily decided, By golly, I really am a creditor  
2 here as opposed to, Gee, I'm represented by this lawyer and  
3 it's okay for him to say so. That would be the place to look  
4 and would give Garlock - I don't know, certainly a large  
5 percentage of what it appears to be seeking and would have  
6 certainly potentially somewhat more probative value, I guess,  
7 because at least there somebody is saying that they have  
8 enough of a claim that they think they're entitled to vote  
9 even though they might not have enough of a claim that  
10 ultimately they would file a proof of claim. Thank you, Your  
11 Honor.

12 THE COURT: Anyone else? Mr. Cassada?

13 MR. RESTIVO (TELEPHONIC): Your Honor, it's James  
14 Restivo in the Pittsburgh Corning case, 00-22876, and in the  
15 North American Refractories case, 02-20198. I just want to  
16 make four quick points. As to the debtor, Pittsburgh  
17 Corning, this has already been litigated and adjudicated. It  
18 is contained in Your Honor's order in that case at Docket No.  
19 7579. If Garlock wants specific 2019 statements as to  
20 particular clients, there is a method for them to ask the  
21 Court for specific statements and why they need it and so in  
22 Pittsburgh Corning this is already *res judicata*, *stari*  
23 *decisis*, collateral estoppel, and law of the case.

24 THE COURT: Did you miss anything, Mr. Restivo?

25 MR. RESTIVO (TELEPHONIC): I don't think so, Your

1 Honor. Secondly, Your Honor, there's a suggestion in  
2 Garlock's brief at page 10 that whatever happened in  
3 Pittsburgh Corning needs to be tempered by the fact that Your  
4 Honor limited Garlock to a single witness in that case, and  
5 Your Honor, the record should be clear that that is not  
6 accurate. The Court will recall, Garlock did not comply with  
7 the pretrial rules, did not list witnesses. We took the  
8 position that as a result of that, Garlock could not put any  
9 witnesses on. Garlock represented to Your Honor they only  
10 had one witness, John Turlick (phonetical) and that witness  
11 would limit his testimony to his declaration, and Your Honor  
12 then said, Okay, you can put him on. Your Honor did not  
13 limit them, that was their proffer. Third, Your Honor, in  
14 both cases, there is a declaration by Paul Grant dated  
15 September 23, 2010, three and a half months before Garlock's  
16 motion in which he says at different times the theory of so-  
17 called friable products and so-called thermal insulation and  
18 friable products being the key to the Garlock need for this  
19 information. And as to NARCO, Your Honor, we represent that  
20 you cannot pulverize by hand pressure into a powder a  
21 refractory brick and we further represent that unibestos in  
22 the Pittsburgh Corning case is similarly non-friable and so  
23 if there's any chance that the Court thinks there is some  
24 merit to Garlock's motion based upon an affidavit that is  
25 rife with errors, we want the ability to depose Mr. Grant

1 before there is a ruling. And fourth, Your Honor,  
2 telephonically it was a little bit difficult to fully  
3 understand the exhibits that we had never seen before. When  
4 the parties talk about timing, Garlock should be required to  
5 circulate all of those exhibits in a package to all of the  
6 objectors in all of the cases. Thank you, Your Honor

7 THE COURT: Anyone else? Mr. Cassada.

8 MR. CASSADA: Thank you, Your Honor. Your Honor,  
9 I'd like to begin by revisiting the first issue we dealt with  
10 and that was the question of whether Garlock had moved to  
11 intervene and reopen the cases, and I want to point out for  
12 Your Honor that those motion are indeed included in our  
13 motion and then there was a short form of notice that went  
14 out to all of the parties required by the Court. I think  
15 that notice cost some \$13,000, and that short notice  
16 highlighted the relief that was being sought, which included  
17 not only access to the 2019 exhibits but also intervention in  
18 the cases as well as reopening of the closed cases.

19 THE COURT: Mr. Garlock - I'm sorry, Mr. Cassada -

20 MR. CASSADA: I get that a lot.

21 THE COURT: I apologize. It hasn't been done  
22 properly. You need to file a motion to reopen the cases.  
23 You have to pay the filing fee, and you have to move to  
24 intervene in the closed cases, and I am not asserting  
25 jurisdiction over closed cases on a motion when the cases are

1 closed, and I have not retained jurisdiction for that  
2 purpose. As to the closed cases, I have no jurisdiction.  
3 I'm not either granting or denying the motion, I'm simply not  
4 adjudicating it. I can't. If you want access in those cases  
5 then you've got to do it procedurally correctly.

6 MR. CASSADA: Okay.

7 THE COURT: As to the open cases, go ahead, you can  
8 proceed.

9 MR. CASSADA: Okay, thank you, Your Honor. Your  
10 Honor, just to briefly address arguments that Mr. Esserman  
11 raised only briefly. We've shown in our motion authority  
12 showing that we clearly do have standing to appear and seek  
13 public access. Also to address the argument that we're  
14 essentially seeking a redo of the Court's orders where the  
15 Court required a motion before access could be granted, we  
16 refer the Court to the District Court opinion and the Third  
17 Circuit affirmance thereof where those Courts said that all  
18 you had done was set forth a procedure and directed the  
19 insurers if they wanted to challenge whether they were  
20 entitled to access to file a motion for access and to see if  
21 the parties seeking closure could demonstrate that there was  
22 a basis for overcoming the first amendment and common law  
23 right of access.

24 THE COURT: No, that's not what those opinions say.  
25 They do say that I set out a process and indeed I did, and I

1 believe Mr. Esserman and Mr. Restivo set out what that  
2 process was, and that process, as I understand it, was  
3 affirmed.

4 MR. CASSADA: Yes, but the Court also said, Your  
5 Honor - I've got a quote here, if the Court will bear with  
6 me. The District Court explained, "The parties rather than  
7 appealing should have filed a motion and permitted the  
8 Bankruptcy Court to develop a record with respect to whether  
9 § 107 of the Bankruptcy Code and the first amendment and  
10 common law rights of public access mandate a right of public  
11 access or whether countervailing concerns justify the  
12 continued protection of the information."

13 THE COURT: Yes, sir.

14 MR. CASSADA: So the District Court was recognizing  
15 that that record had never been made.

16 THE COURT: That's right.

17 MR. CASSADA: Those issues were never before the  
18 Court.

19 THE COURT: That's right.

20 MR. CASSADA: Now, those issues are before the  
21 Court.

22 THE COURT: They are.

23 MR. CASSADA: And it was incumbent upon the  
24 objectors to show that there's a basis for overcoming the  
25 right of public access, and, Your Honor, we don't believe

1 that any objector has come even close to doing that. Mr.  
2 Esserman didn't really offer a reason but instead went into  
3 the history of the Court's proceedings before the Court  
4 entered an order saying that parties who wanted access could  
5 file a motion to seek access. Ms. Ramsey offered four  
6 reasons, none of those reasons apply in this situation and  
7 none of them found any support in the case law. First she  
8 said that some of the individuals who were identified were  
9 not parties to the case, never took any action in the case.  
10 Their rights were never adjudicated, and therefore, they've  
11 got this right to privacy. Well, Your Honor, we don't know  
12 that, and I don't think the Court knows that. I'm not even  
13 sure whether Ms. Ramsey knows that or whether they're just  
14 asserting that. No one's compared, as far as we know, the  
15 2019 statements to the ballots to see if that's even true in  
16 the first place, but even if it were, it still makes no  
17 difference, Your Honor. These are judicial records and  
18 there's a right of public access unless it could be shown by  
19 the person who's seeking to close it that that person will  
20 suffer clearly defined and serious injury, and no one has  
21 offered that today. There's also the argument that the  
22 request for access has nothing to do with the purpose of the  
23 Rule 2019 statement. There's no case law or other support  
24 for that. The purpose has no relevance at all unless Your  
25 Honor believes that there is an improper purpose, and we've

1 heard a lot here, a lot of statements to the effect that  
2 Garlock's interest and looking at these statements to see if  
3 they impeach are inconsistent with statements made elsewhere  
4 is somehow an improper purpose, but clearly it's not. In  
5 fact that's one of the purposes for having transparency and  
6 making sure that court records are open to the public is so  
7 the public can look at them and possibly see if parties are  
8 taking -

9 THE COURT: Mr. Cassada, I think we're talking at  
10 angles to each other. The reason I think that this is an  
11 improper purpose, to the extent that it is an improper  
12 purpose, I'm not trying to make a finding, I'm trying to  
13 articulate why I am concerned by Garlock's request.

14 MR. CASSADA: Okay.

15 THE COURT: Okay. These particular documents can't  
16 stand for the proposition of impeaching a creditor who has  
17 filed a complaint in another jurisdiction. These are not  
18 documents filed under oath by a creditor. They're documents  
19 filed by a lawyer who says, in essence, I represent A.  
20 That's what the purpose is. Now, did they contain other  
21 information? Yes, but that's the purpose and that's why  
22 they're filed and that's how they're filed. They aren't  
23 filed by a creditor who says, My lawyer is A or I have a  
24 claim against whoever, Garlock, SPHC, anyone. It's not a  
25 creditor's document that's being filed. It's filed by a law



1 firm. The only impeachment purpose they could possibly have  
2 is to say that on - at the time frame when the lawyer filed  
3 the 2019 statement, the lawyer didn't in fact represent that  
4 creditor and never corrected that fact. That's it. That's  
5 what the impeachment would be, and that's not what Garlock's  
6 saying you want to use it for. So, I don't see the relevance  
7 in that sense, and yes, does that weigh in favor of keeping  
8 privacy rights private, and yes, I do think medical  
9 information to the extent it's not volunteered by a creditor  
10 is private. I do hold that view, yes. I don't see why it's  
11 available on the public record unless it's voluntarily  
12 produced in that fashion. This information was not  
13 voluntarily produced by the creditors in the case. So, does  
14 that weigh, does the, in quotes, and again, I'm not making  
15 findings, I'm trying to use a word that's in the cases, the,  
16 in quotes, "improper use" by Garlock because it's not  
17 relevant to the use that Garlock professes it wants to make;  
18 does that weigh in favor of keeping the information private?  
19 Yes. The other thing that weighs in favor of that is the  
20 fact that there are publicly available documents that are  
21 filed by the creditor or by a law firm on behalf of the  
22 creditor that do show that a claim exists in a particular  
23 case. If that's what Garlock is looking at by way of  
24 impeachment, that may be relevant but those are the ballots.  
25 That's not the 2019 statements.

1 MR. CASSADA: Yes, Your Honor, Garlock, obviously,  
2 is not going to and can't use these documents to impeach a  
3 statement that they don't impeach, but I would encourage the  
4 Court before the Court reaches any conclusions about what the  
5 documents say and what they can be used for to the extent  
6 that that's somehow relevant to the decision here to actually  
7 read the 2019 statements and see what they say because they  
8 say something entirely different from the premise of the  
9 Court's statement about what they could be used for, and I  
10 would encourage the Court to read Rule 2019 and see that that  
11 requires law firms to identify their clients who are  
12 creditors when there's more than one. Now it's possible that  
13 these creditors have disputed claims, but normally when law  
14 firms appear in a case and identify their creditors, they're  
15 not the ones disputing the claims, and here we're in the  
16 unusual circumstance where they're saying that these might  
17 not be creditors after all, but at this point -

18 THE COURT: And that was made clear when the law  
19 firms agreed to file the 2019 statements. In some instances  
20 they represent potentially future claimants, people who know  
21 they've been exposed but have no injury, demand holders and  
22 yet those people may never have a demand because their injury  
23 may never manifest and so, the statements don't necessarily  
24 show that there is a, quote, "present creditor" involved.  
25 That's the difficulty with 2019 in a mass tort context. So

1 they don't always show that there is a creditor. What shows  
2 that there is a creditor in a case is the ballot that was  
3 voted.

4 MR. CASSADA: Your Honor, the 2019 statements, they  
5 show what they state.

6 THE COURT: That's right, they do.

7 MR. CASSADA: So they state what they state and I  
8 would encourage the Court before it draws any conclusion that  
9 it thinks is important to read the 2019 statements and see  
10 what they say.

11 THE COURT: I will look at some of them. I'm not  
12 going back to look at every 2019 statement, I can assure you.

13 MR. CASSADA: Well, we've provided Your Honor with a  
14 very helpful exhibit that actually quotes language out of the  
15 2019 statements.

16 THE COURT: I'll look at the ones that were before  
17 me.

18 MR. CASSADA: Okay. Now with respect to this idea  
19 that these folks didn't volunteer to appear in these cases.  
20 Recall, Your Honor, there's an exemplar instrument whereby  
21 the law firms had been authorized by their clients who were  
22 identified to appear and to vindicate the rights of those  
23 clients in the case, and those law firms did that. I mean,  
24 they're doing it here today.

25 THE COURT: Actually, most of the exemplars do not

1 say you've got the authority to - I'll just pick a case to  
2 represent the . . . (indiscernible). They say you've got the  
3 authority to represent me and it's the lawyer who decides  
4 where to file that exemplar, usually.

5 MR. CASSADA: Well, Your Honor has seen the  
6 exemplars.

7 THE COURT: I have.

8 MR. CASSADA: I don't have the benefit of having  
9 seen them, so I can't dispute what they might say.

10 THE COURT: Well, I don't know what all of them say,  
11 Mr. Cassada. I'm not attempting to say that I know what all  
12 of them say, but I can say that that's a fair recitation of  
13 many of them.

14 MR. CASSADA: Okay. Mr. Lockwood brought up the  
15 idea of the retention agreement being protect-able under  
16 § 107(b) as commercial information or trade secret. I don't  
17 know why the 20-plus law firms who appeared and objected  
18 didn't raise that if that were the case. It seems like they  
19 would be in a better position than Mr. Lockwood who  
20 represents a committee to know if that argument existed and  
21 actually does exist, but they didn't bring it. On the other  
22 hand, that's the one exhibit that we don't have a particular  
23 interest in. We'd be happy for the Court to order access to  
24 the exhibits that identify the names and all of the  
25 information of the persons who are creditors in the case as

1 well as to produce the exemplars stating that the lawyers are  
2 authorized to appear for them whether they stay in this case  
3 or not, that's yet to be seen by us anyway, but that's  
4 information that we're interested in. Now, again, there's  
5 also this assumption of -

6 THE COURT: What public interest is there to be  
7 generated by the fact that firm A represents client B; what's  
8 the public interest in that fact? What public right is  
9 Garlock going to vindicate by knowing that firm A represents  
10 person B?

11 MR. CASSADA: The public interest, Your Honor, is  
12 the interest of access. So let's be clear about that. It's  
13 not what Garlock's purpose is, but, yes, the identity of  
14 claimants, and here we've got 12 different bankruptcy cases  
15 and so this information identifies, if I understand what I'm  
16 hearing from the objectors here, every person who claims to  
17 have an asbestos claim during a certain period of time, and  
18 certainly there's a big and significant public interest in  
19 knowing who these people are who are out there asserting  
20 claims in the bankruptcy cases. But in addition to that,  
21 Your Honor, we have an interest in seeing who these people  
22 are, who the plaintiffs' firms say are creditors in these  
23 bankruptcy cases, who most of or many of the plaintiffs'  
24 firms say were exposed to and injured by the products of  
25 these debtors. Garlock, of course, has an interest in that

1 because most, if not many of these claimants, were also  
2 asserting claims against Garlock saying that Garlock caused  
3 their injuries. So, certainly there's a, you know, Garlock  
4 has a specific interest and there's a huge public interest in  
5 knowing who the persons are who are asserting claims in  
6 bankruptcy cases.

7 THE COURT: Then the ballots are the things that  
8 tell you that, not the 2019 statements. If that's the public  
9 interest, in knowing who the creditors of the case are who  
10 say they're creditors, that's what the ballots provide, and  
11 they're a public record.

12 MR. CASSADA: Yes, and ballots also have the same  
13 information, as I understand it, that's been claimed to be  
14 private here and that's the -

15 THE COURT: Well, then as to those creditors who  
16 have voluntarily filed a ballot, they put that information on  
17 the public record and you can get it.

18 MR. CASSADA: Well, the claimants have also  
19 voluntarily appeared in the cases through their lawyers and  
20 have been authorized by their lawyer to identify them on 2019  
21 statements. But that doesn't matter, Your Honor, these are  
22 judicial records. They're open to the public and there is no  
23 privacy right and in any tort claimant and having to disclose  
24 the basis for their tort claim.

25 THE COURT: They aren't necessarily tort claimants,

1     that's the problem - that's a problem.

2                 MR. CASSADA: Well, the statements say that they're  
3     tort claimants.

4                 THE COURT: The statements say that the law firm  
5     represents this particular person, yes, that's what they say.

6                 MR. CASSADA: And that this person was - in many  
7     cases that this person has been exposed to and injured by the  
8     asbestos products manufactured, marketed, distributed, sold,  
9     or produced by - in this case, we cite here Pittsburgh  
10    Corning Corporation. Many of the statements say that or that  
11    these folks are creditors of these debtors. There's no  
12    equivocation in that at all, Your Honor. These statements  
13    say what they say, and we can only guess, and we're told that  
14    these people didn't or maybe didn't vote or maybe some of  
15    them voted and some of them filed claims later against the  
16    trust, we can only guess on that. The difference between the  
17    2019 statements and the ballots is one of timing, when did  
18    the law firms first have a basis for believing that these  
19    persons were creditors in this case. That's what the 2019  
20    statement show that the ballots don't show. Your Honor, I  
21    should have stated at the beginning that Garlock would have  
22    no objection if the Court provided access to Garlock with the  
23    agreement that Garlock wouldn't provide access to other  
24    purposes or use the information for any purpose not permitted  
25    in Garlock's bankruptcy case, where Garlock itself is

1 litigating some of these issues. If Your Honor is going to  
2 schedule a hearing in the future on that, we will be filing a  
3 motion to reopen all the cases or perfecting the motion that  
4 we already filed by paying the filing fee.

5 THE COURT: It's not a motion you filed, Mr.  
6 Cassada, I can't be more clear. If you want to file a motion  
7 reopening a case, please, file a motion in the specific case  
8 to reopen, do what you need to do and if you're also going to  
9 file a motion to intervene then you need to do that as well  
10 because I don't - I need these in a procedurally correct  
11 posture otherwise I don't have jurisdiction over this issue.  
12 Those cases are closed. There are no cases anymore, and Rule  
13 2019 itself says that the purpose in the statement is for use  
14 in the case. There isn't a case when it's closed.

15 MR. CASSADA: I see. Well, just so the Court  
16 understand and I understand, we filed a separate motion in  
17 each case.

18 THE COURT: Yes, you did.

19 MR. CASSADA: And in that motion we asked that the  
20 Court in a closed case, reopen the case and we moved to  
21 intervene. So that there's a motion filed - now, Your Honor  
22 said that we hadn't paid the fee.

23 THE COURT: I'm saying it's not procedurally correct  
24 and it's going to be dismissed without prejudice because  
25 they're not procedurally correct in the closed cases. I am



1 not going to adjudicate anything except for the fact that the  
2 cases are closed, the motions haven't been filed in open  
3 cases. The Clerk should have stricken them because they were  
4 closed, and I'm going to have the Clerk dismiss them without  
5 prejudice because the cases are closed and haven't been  
6 reopened, and they have to be reopened before you can file  
7 anything in those cases.

8 MR. CASSADA: So what Your Honor is saying is that  
9 the motion to open the case should have been filed separately  
10 and not requested in any other way.

11 THE COURT: It has to be otherwise the Clerk doesn't  
12 know that you're asking to reopen the case to charge the fee.  
13 There's nothing on this docket except a phrase in your motion  
14 that indicates that you want to the case reopened, Mr.  
15 Cassada. There's no docketed entry that says this is a  
16 motion to reopen the case. There's nothing called a motion  
17 to intervene, if that's what you're intending to do. There's  
18 only this motion that shouldn't have been accepted in those  
19 cases because they're closed. It's procedurally incorrect.  
20 I have no jurisdiction. I don't know how else to say it.

21 MR. CASSADA: Okay, well, no, I appreciate that  
22 clarification. We did call the Clerk's Office to get  
23 guidance on how to proceed, Your Honor. I don't want to  
24 suggest that we were misled or anything but we were very  
25 careful to make sure that we were filing this in a way that

1 the Court would have us file it and to make sure that we gave  
2 notice to the person.

3 THE COURT: Well, I can only apologize for whoever  
4 gave you the incorrect information. You were given incorrect  
5 information. I'm going to have them stricken because they're  
6 not supposed to be giving legal advice, and to the extent it  
7 was legal advice, it was improper in the first place. To the  
8 extent that it was procedural, it was just wrong. So do it  
9 correctly.

10 MR. CASSADA: I'm not trying to cast blame on anyone  
11 in the Clerk's Office, Your Honor, I just wanted the Court to  
12 know we didn't do this cavalierly.

13 THE COURT: All right. Okay, what I need is to know  
14 how much time you folks want to look at these exhibits and do  
15 you intend to produce anything on your own, and Mr. Restivo,  
16 I know you're not here. I'd like to know your view about  
17 that too.

18 MR. RESTIVO (TELEPHONIC): It appeared there were 12  
19 or 15 exhibits -

20 THE COURT: There are three binders, Mr. Restivo.  
21 One three inch and two smaller binders, like two two-inch  
22 binders.

23 MR. RESTIVO (TELEPHONIC): Assuming Garlock would  
24 air express that to us, it seems to me on the exhibits,  
25 within a week, you know, we could read them and determine

1 whether or not they're relevant or hearsay or whatever and so  
2 I guess we would ask for a week, Your Honor.

3 THE COURT: All right, then Garlock is to make sure  
4 that, let's say within the next week, that the exhibits can  
5 be produced to everyone and everyone who's filed objections  
6 or requests in this case, and then, folks, is a week after  
7 you get them - let me just say two weeks from today to make  
8 it clear so we have dates. Is the time sufficient time?

9 MR. RESTIVO (TELEPHONIC): It's sufficient for  
10 Pittsburgh Corning, Your Honor, and for NARCO.

11 THE COURT: All right. Will the folks here in  
12 court, I guess, have the exhibits today?

13 MR. ESSERMAN: Well, we just got them today.

14 THE COURT: Yes, so is two weeks from today  
15 sufficient?

16 MR. ESSERMAN: We have one set for three of us.

17 THE COURT: Oh, well, no. You each need sets.

18 MR. WERKHEISER: Your Honor, we're happy to provide  
19 them. We would ask that we be able to provide them by disc.  
20 They are rather large.

21 MR. ESSERMAN: That's fine.

22 THE COURT: Is that agreeable?

23 MR. ESSERMAN: Yes.

24 THE COURT: Mr. Restivo, is a disc okay?

25 MR. RESTIVO (TELEPHONIC): Yes, Your Honor.

1 THE COURT: All right, that's fine.

2 MR. WOLF: Your Honor, I just wanted to clarify one  
3 point about the manner of service. I was the one who oversaw  
4 the service and I wanted to be exactly clear what we did. We  
5 served all the law firms that we can identify as law firms  
6 with the entire motion as filed with exhibits. Then to the  
7 other parties on the 2002 list, the Court required us to  
8 provide notice to, we provided a short form of notice that  
9 set out the relief Garlock was seeking, including -

10 THE COURT: It's not a service issue as far as I  
11 know unless you're talking about the exhibits.

12 MR. WOLF: Right, and I just want to make clear that  
13 that short notice also contained the fact that we were  
14 seeking to intervene and reopen the cases.

15 THE COURT: Mr. Wolf, I understand that. I can't  
16 help that fact that you put that in a notice. It's not done  
17 correctly. I don't have jurisdiction. The cases aren't  
18 open. The motion should have been stricken. I've said this  
19 at least 15 times. I don't know what else to tell you. I'm  
20 going to dismiss the motions without prejudice because  
21 they're filed in closed cases and there is no case. There is  
22 nothing to be adjudicated in those cases. There is no case.  
23 If you want a case, you have to reopen the case.

24 MR. WOLF: Well, I would refer the Court to the  
25 cases arising under 1334 that told them where the - there's

1 1334 jurisdiction. The Court has jurisdiction and -

2 THE COURT: Mr. Worf, I've stated it the way I  
3 understand it, that's what I'm going to do. If you don't  
4 like it, appeal it, that's all I can tell you. The Third  
5 Circuit's very clear about jurisdiction in the Bankruptcy  
6 Courts in closed cases, and I don't even see an nexus between  
7 your request for the 2019 statements in closed cases and what  
8 the purpose is. So, I can't determine on my own that there  
9 is that nexus. If you want that determination, do it right,  
10 that's all I can tell you. I'm not going to adjudicate them  
11 in the closed cases. I will continue these issues, as we  
12 discussed, for the open cases. If you move to reopen and  
13 move to intervene, then, you know, I'll deal with what I have  
14 to in the open cases too, but right now, they're closed.

15 MR. WORF: Thank you, Your Honor.

16 THE COURT: And there are rules that talk about  
17 motions to reopen and bankruptcy rules and motions to  
18 intervene. You may want to read them.

19 MR. WERKHEISER: Your Honor, for the record again,  
20 it's Gregory Werkheiser. In light of Your Honor's ruling,  
21 we're just trying to think through the logistics of this to  
22 place the least burden possible on the Court and expedite  
23 resolving these issues, so our thought was that we would file  
24 formal motions to intervene and reopen, pay the filing fee on  
25 the motions to reopen electronically pursuant to the CBCF, by

1 the end of the week, and then would propose to have - and  
2 Your Honor, just so we're clear, you want us to re-file the  
3 actual motions requesting access to the 2019 information?

4 THE COURT: In those -

5 MR. WERKHEISER: In those cases, yes, Your Honor.

6 THE COURT: You need to file all the documents  
7 together. The parties already, as I understand it, have the  
8 notice, and I don't think there are going to be any issues if  
9 in fact the cases are reopened, but somebody may be objecting  
10 to reopening the cases. The reorganized debtors may have  
11 significant issues about reopening cases when they then have  
12 to start paying U.S. Trustee fees on all their distributions  
13 again. There are reasons why cases are closed.

14 MR. WERKHEISER: I understood, Your Honor, and I  
15 know in other cases the Courts have been willing to enter  
16 orders that absolve the debtor from the requirement, paying  
17 no trustee fees.

18 THE COURT: Talk to the U.S. Trustee. If I can do  
19 it, I'm willing to, but don't forget, I was the one who wrote  
20 the Griffin at the Stone Mansion case where the Third Circuit  
21 said you've got to pay those fees even though they were in  
22 the 11<sup>th</sup> hour admonition by Congress and even though it was in  
23 a case in which the debtor was already making plan  
24 confirmation payments and had dedicated all its assets to the  
25 case. So, give me some authority.

1 MR. WERKHEISER: Yes, Your Honor. Your Honor, what  
2 we propose then is, I think we could be in a position to file  
3 those motions and re-file the motion for our 2019 relief by  
4 the end of this week.

5 THE COURT: All right.

6 MR. WERKHEISER: And then we propose to have all of  
7 that heard together with any objections to the exhibits a few  
8 weeks from now.

9 THE COURT: That's fine.

10 MR. WERKHEISER: Thank you, Your Honor.

11 THE COURT: All right. I'm still back on how much  
12 time. Let's assume that you get the exhibits within a week.  
13 Is a week sufficient time to look at them?

14 MR. ESSERMAN: Yes, Your Honor.

15 THE COURT: All right. So - I'm sorry. Does  
16 someone have a calendar. What's a date that's two weeks from  
17 today?

18 UNIDENTIFIED SPEAKER: 28<sup>th</sup>.

19 THE COURT: 28<sup>th</sup>? Oh, Happy Valentine's Day,  
20 everyone. Okay. So the motions to reopen, the motion to  
21 intervene, and the motion for the 2019 access will be filed  
22 by the 19<sup>th</sup>? Does that make the next omnibus agenda; whoever  
23 knows the dates? I'm sorry? It is number 35, okay. All  
24 right -

25 MR. WERKHEISER: Your Honor, I think you said the

1 19<sup>th</sup>, the 18<sup>th</sup> is actually Friday.

2 THE COURT: 18<sup>th</sup>, okay, thank you.

3 MR. WERKHEISER: Thank you.

4 THE COURT: Is that sufficient time?

5 MR. WERKHEISER: I think we can do that, yes, Your  
6 Honor.

7 THE COURT: All right. Then all of the exhibits on  
8 discs is fine, are also to be submitted to the parties,  
9 whoever they may be, the objecting parties by February 18,  
10 and the parties have until, I guess I need two weeks from  
11 that Friday, not from today, so, 25 - that's a date in March.  
12 March 4<sup>th</sup> to object to exhibits. The motions to reopen, the  
13 motions to intervene and so forth will just go on the normal  
14 omnibus calendar for objections. Folks who are looking at  
15 the exhibits, are you going to be submitting your own  
16 exhibits. If so, how much time do you need for that?

17 MR. ESSERMAN: Either the 11<sup>th</sup> or the 18<sup>th</sup> of March,  
18 Your Honor, would be fine.

19 THE COURT: When's the next hearing? March 28<sup>th</sup>? If  
20 you can do it by the 11<sup>th</sup>, that would give -

21 MR. ESSERMAN: That's fine.

22 THE COURT: All right. And then Garlock can have  
23 any objection that it has to those exhibits by March 18<sup>th</sup>?  
24 Okay, and this hearing on the 2019s is continued to March  
25 28<sup>th</sup>. I guess we'll start at - there are a couple of cases



1 already scheduled at 8:30. Why don't we start at 9 o'clock.  
2 We may have to juggle this schedule. All right, so we'll  
3 start this hearing at 9 so that hopefully I can take care of  
4 any issues that will take less time at 8:30. All right,  
5 anything else on the 2019 issues?

6 MR. WERKHEISER: Your Honor, I think that concludes  
7 everything for today. So, we will see Your Honor again on  
8 March 28<sup>th</sup> at 9 o'clock -

9 THE COURT: Okay.

10 MR. WERKHEISER: - with respect to all of that.  
11 Your Honor, may we be excused from the further proceedings  
12 today?

13 THE COURT: Yes. Anyone who's here only for the  
14 2019 issues is excused. Thank you.

15 MR. WERKHEISER: Thank you, Your Honor.

16 MR. ESSERMAN: Thank you, Your Honor.

17 THE COURT: We'll take a 10-minute recess so that  
18 parties can juggle. I'm going to take the Grace case next.

19 (The remainder of this page is intentionally left  
20 blank.)

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1 I think that will be the least time-consuming issue.

2 (Whereupon at 10:50 a.m., the hearing in this  
3 matter was concluded for this date.)

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18 I, Elaine M. Ryan, approved transcriber for the  
19 United States Courts, certify that the foregoing is a correct  
20 transcript from the electronic sound recording of the  
21 proceedings in the above-entitled matter.

22

23 /s/ Elaine M. Ryan February 16, 2011  
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